2257.

SUPREME COURT OF THE UNITED STATES.

No. 85.

WILLIAM CHRISTY, Plff. in Er.

vs.

L. P. ALFORD, Adm'r of HENRY D. BULLARD, dec'd.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE DISTRICT OF TEXAS.

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THE UNITED STATES OF AMERICA,
District of Texas to wit:

Pleas held before the Honorable John C. Watrous, Judge of the District Court of the United States for the District aforesaid, at the court room in the City of Galveston in the District aforesaid, on the first Monday *in the first Monday* of January, in the year of our Lord one thousand eight hundred and fifty-four.

Be it remembered that heretofore, to wit: on the tenth day of in the year of our Lord one thousand eight hundred and forty-nine, William Christy, by his attorney, Robert Hughes, filed in the Clerk's office of the District Court aforesaid at Galveston, his petition in trespass to try title against Henry D. Bullard in the words and figures following, to wit:—

(*Petition.*)

UNITED STATES OF AMERICA,
District of Texas:

December Term, 1849.

To the Honorable John C. Watrous, Judge of said District:

The petition of William Christy, a citizen and resident of the City of New Orleans, and State of Louisiana, plaintiff, against Henry D. Bullard, a citizen and resident of the County of Harrison and State of Texas, defendant.

And thereupon your petitioner humbly complaining, respectfully represents unto your honor, that heretofore, to wit, on the first day of June, A. D. 1849, at to wit: in the district aforesaid, he was seized in his demesne, as of, for, of, in and to a certain tract or parcel of land, situate, lying and being in the County of Harrison aforesaid, in the District aforesaid, between the Sabine and Red Rivers, and south of Soda Lake, and butted and bounded as follows, to wit: Beginning at a corner post, from which a hickory eighteen inches in diameter bears south twenty-eight degrees west, two and three-fifths varas distant, and a pin oak twenty inches in diameter bears north twenty degrees west, three varas distant; thence north five thousand varas, intersecting at the distance of fourteen hundred varas a creek also running east, and at three thousand two hundred varas, a creek also running east, to the second corner, from which a hickory fifteen inches in diameter bears north seventy degrees west, eleven varas distant, and an oak fifteen inches in diameter bears south fourteen degrees east, four and a fifth varas distant; thence west fifteen thousand varas, intersecting at the distance of twenty-four hundred varas, a creek running southeast, and at five thousand varas a ravine running northeast, and at six thousand varas, also running northeast, and at twelve thousand two hundred varas, a creek running

northeast to the third corner post, from which a black-jack, fifteen inches in diameter, bears north four degrees east, five and two-fifth varas distant; thence south five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at three thousand four hundred varas, a ravine also running east, to the fourth corner post, from which a black-jack, twelve inches in diameter, bears north twenty-three degrees west, three and two-fifth varas distant, and another black-jack, fourteen inches in diameter, bears south seventy-eight degrees east, five and two-fifths varas distant; thence east to the first corner post, fifteen thousand varas, intersecting at the distance of six thousand seven hundred varas, a ravine running southeast, at eleven thousand four hundred varas, another ravine also running southeast, containing three leagues or seventy-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and being so seized, and then and there possessed of the same, the said Henry D. Bullard, then and there afterwards, to wit: on the day and year aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances belonging thereunto, and then and there ejected, expelled, put out and amoved your petitioner from the said land and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted and bounded as aforesaid, and from the possession, use, occupation and enjoyment of the same, and kept and continued him so ejected, expelled, put out and amoved for a long space of time, to wit: from thence hitherto; and other wrongs then and there did, to the great damage of your petitioner. Wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your Honor and complain that, also, heretofore, to wit: on the said first day of June, A. D. 1849, in the district aforesaid, he was seized in his demesne, as of, for, of, in, and to another tract or parcel of land, situate, lying and being in the said county of Harrison, also between the Sabine and Red rivers, and south of the Soda Lake aforesaid, which is butted and bounded as follows, to wit: Beginning at a corner post, from which a red oak, eighteen inches in diameter, bears north forty-four degrees west, nine and three-fifth varas distant, and a hickory ten inches in diameter bears south eighty-four degrees east, six and three-fifths varas distant; thence north five thousand varas, intersecting at the distance of four hundred varas a creek ten varas wide, running east, and at twelve hundred varas, another creek fifteen varas wide, running east, and at four thousand five hundred varas another creek ten varas wide, running east to the second corner, a post from which a red oak, eighteen inches in diameter, bears south twenty-six degrees west, nine and one-fifth varas distant, and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence west, five

thousand varas, to the third corner, a post, from which a hickory, eighteen inches in diameter, bears north twenty degrees west, three varas distant; thence south five thousand varas, intersecting at one thousand varas a creek ten varas wide, running east, and at fourteen hundred varas another creek, ten varas wide, also running east; at twenty-six hundred varas another creek, two varas wide, also running east, and at four thousand three hundred varas, a ravine running east to the fourth corner, a post, from which a hickory, fifteen inches in diameter, bears north fifteen degrees east, three varas distant, and another hickory, fifteen inches in diameter, bears south eighty-eight degrees east, sixteen varas distant; thence south five thousand varas to the first corner, intersecting, at the distance of three thousand varas, a creek ten varas wide, running northeast, containing one league, or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and being so thereof seized, and then and there possessed of the same, the said Henry D. Bullard, then and there afterwards, to wit: on the day and year last aforesaid, at the district aforesaid, with force and arms entered in and upon the said land, situated, butted and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances thereto belonging, so situated, butted and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved, for a long space of time, to wit: from thence hitherto, and other wrongs then and there did to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your Honor, and complain, that heretofore, to wit: on the said first day of June, A. D. 1849, at to wit: in the district aforesaid, he was seized in his demesne as of, for, of, in, and to another tract or parcel of land, situate, lying and being, in the said county of Harrison, in the district aforesaid, between the Sabine and Red rivers, south of Soda Lake, and butted and bounded as follows, to wit: Beginning at a post, a red oak, eighteen inches in diameter, bears south seventy-six degrees west, four and one-fifth varas distant, and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant, thence north five thousand varas, intersecting at the distance of one hundred varas, a ravine running east, and at nineteen hundred varas a stream ten varas wide, also running east, and at the distance of twenty-six hundred varas, a ravine running southeast, to the second corner, a post from which a black-jack, sixteen inches in diameter, bears south eighty degrees west, four and four-fifths varas distant, and a hickory, fourteen inches in diameter, bears north forty-three degrees east, six varas distant; thence west five thousand varas to a post, the third corner, from which an oak,

fifteen inches in diameter, bears south fourteen degrees east, four and one-fifth varas distant, and a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas distant; thence south five thousand varas, intersecting, at twenty-one hundred varas, a ravine running east, to a post, the fourth and last corner from which a hickory, eighteen inches in diameter, bears south twenty-eight degrees west, two and three-fifth varas distant, and a red oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence east, five thousand varas to the first corner, containing one league, or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and being so thereof seized, and then and there possessed of the same, the said Henry D. Bullard, then and there afterwards, to wit: on the day and year aforesaid, at the district aforesaid, with force and arms, entering in and upon the said lands, situated, butted and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances, so situated as aforesaid, and from the possession, use, occupation and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit: from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

The premises considered, your petitioner prays that process of citation issue to the Marshal of the District aforesaid, commanding, &c., that the said Henry D. Bullard may be made a defendant hereto, may appear and answer this petition, and after due trial had by and before your honor, according to the rules of law, your petitioner may have judgment for such damages as he has sustained by reason of the premises, and for the recovery of the lands aforesaid, with the hereditaments and appurtenances aforesaid, for his costs about his suit in this behalf expended, with writ of possession upon recovery of said lands, &c., or that he may obtain such relief as he is entitled to. And your petitioner, as in duty bound, will ever pray, &c.

ROB. HUGHES, *P. Q.*

Whereupon, on the eleventh day of July, A. D. one thousand eight hundred and forty-nine, a citation in due form was issued from the said clerk's office, in the words and of the tenor following, to wit:—

(*Citation.*)

UNITED STATES DISTRICT COURT,
District of Texas:

The President of the United States of America, to the Marshal, or any of his lawful deputies of the District of Texas, greeting:—

You are hereby commanded to summon Henry D. Bullard, if he be found in your District, to be and appear before the Honorable, the District Court of the United States, at a court to be holden in and for the District of Texas, at the city of Galveston, on the first Monday of December next, to answer the petition and complaint of William Christy, in an action amounting to the sum of twenty thousand dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the Honorable John C. Watrous, Judge of said court, and seal of court, at the city of Galveston, this eleventh day of July, A. D. 1849, and seventy-fourth year of the Independence of the United States.

[L. S.] JAMES LOVE,
Clerk.

Upon which said summons is the following endorsement of service, to wit:—

(*Return.*)

Received 13th July, A. D. 1849, and executed 3d October, 1849, by serving the defendant in person with a true copy of this summons, and an attested copy of petition, as furnished by the clerk of this court.

J. BATES,
U. S. Marshal District of Texas.

And afterwards, to wit: on the 24th day of January, A. D. 1850, that being a day of said District Court, begun and held as aforesaid, on the first Monday in the month of January aforesaid, the following order was passed by the court here, to wit:—

(*Order.*)

By agreement of the parties, this cause was continued, and leave is given the defendant until the first day of February to file his answer. And it is further agreed by the parties, that the surveyor of Harrison County shall go upon the land in controversy, upon a day to be designated by him, whereof twenty days' notice is to be given to the parties herein, and survey and lay out the as either party shall require, and return a fair plot and report thereof to the next term of this court.

And afterwards, to wit: on the fourth day of February, in the year of our Lord, one thousand eight hundred and fifty, the following order was passed by the court here in this cause, to wit:—

On motion, Edward Clarke, of Harrison County, is appointed Special Commissioner, to take testimony to be read in evidence on the trial of this cause.

And afterwards, on the fourth day of February, in the year of

our Lord one thousand eight hundred and fifty, the defendant herein by his attorneys, Messrs. Henderson & Hill, Frazer & Shidd, filed his answer herein, in the words and of the tenor following, to wit:

(*Answer.*)

UNITED STATES OF AMERICA,
District of Texas:

WILLIAM CHRISTY
vs.
HENRY D. BULLARD. } District Court.

And now comes the defendant by his attorneys, and answering the petition of the said plaintiff, says, that he denies all and singular the allegations in said petition, and prays that the plaintiff be held to strict proof of the same.

2. And as to the trespasses and ejectments, or either or any of them complained by plaintiff in his petition, the defendant says he is not guilty, and puts himself upon the country, &c.

3. And the defendant further answers and says, that as to the pretended grant or title of the plaintiff to the land described in his petition (if any paper title he has), the same bears date, to wit: the twentieth day of September, A. D. 1835, and the land described in the said pretended grant or title, or in said petition, is and was at the date of said grant, situated in twenty frontier leagues bordering on the United States line, and said pretended grant was made without the approbation or assent of the Executive of the National Government of Mexico.

4. And the said defendant further says, that if any such grant or title was made as by said plaintiff is pretended, the same was made on, to wit: the twentieth day of September, A. D. 1835, and was not made by any public officer, commissioner, or authority then, to wit: at the date of said pretended grant or title, existing in the State of Coahuila and Texas, competent to make the same.

5. And the said defendant further says, that the plaintiff claims the land sued for, under and through a pretended grant from the Government of the State of Coahuila and Texas, made to one Miguel Arceniega, as a Mexican and purchaser, and purporting to have been procured for the said Arceniega by one William G. Logan, as his agent, and the defendant says, that the said pretended grant or title of the plaintiff to the land sued for, is not valid in law, because the same was procured from the Government of the State of Coahuila and Texas by fraud, in this, that the said Miguel Arceniega and the said William G. Logan combined and confederated together for the purpose of evading the law then in force, allowing the sale of lands to Mexicans, and to them only; and falsely and fraudulently represented to the said Government that the application, by said Arcenie-

ga, for the said grant of land, was really and *bona fide* made for him by the said Logan, and that the said Arceniega was to be the real purchaser of said land, and to hold and enjoy the same, as a Mexican citizen; while in truth, the said Arceniega fraudulently permitted the said Logan to use his name, and, in his name, to procure the said grant solely for the use and benefit of him, the said Logan, who was not, at the time of procuring said grant, a Mexican citizen, and who, by the false and fraudulent practices aforesaid, procured the said grant, and appropriated the land granted, to his (the said Logan's) own use and benefit.

6. And the said defendant says, that the plaintiff claims the premises, described in his petition, by a pretended grant, purporting to have been made by authority of the State of Coahuila and Texas, to one Miguel Arceniega, bearing date, to wit: the twentieth day of September, A. D. 1835; and that the said pretended grant was made upon the conditions, that the said Arceniega, or the person or persons to whom he might alienate the land, in said grant described, should cultivate the same within six years from the acquisition thereof by the said pretended title, and *and* pay for said land the price established by law; and the said defendant says, that the said Arceniega, and those claiming said land under him, wholly failed to comply with said conditions.

7. And the said defendant says, that the said plaintiff claims the land, described in his petition, under and through a pretended grant, purporting to have been made to one Miguel Arceniega, by authority of the Government of the State of Coahuila and Texas, bearing date, to wit: the twentieth day of September, A. D. 1835; and under and through a pretended claim of transfer from said Arceniega to said plaintiff, and that within six years from the date of said pretended grant, and before the annexation of Texas to the United States, the said pretended transfers were made to said plaintiff; and that the said plaintiff was not, at the date of said pretended transfer to him, and previous thereto, had never been a resident or citizen of Texas or of Mexico, but was then and thence hitherto continued to be a resident and citizen of the United States of America, owing and paying allegiance to the Government thereof.

8. Said defendant further says, that the land claimed by plaintiff, in his petition, is located within the territory designated as the twenty frontier leagues, bordering on the United States of the north, in the act of the Congress of the Republic of Texas, approved January 9th, A. D. 1841, and entitled "An act to quiet the land-titles within the twenty frontier leagues bordering on the United States of the north;" and is claimed by plaintiff by virtue of said location, made prior to the seventeenth day of March, A. D. 1836; and that said plaintiff, and those through whom he claims said land, did not commence an action to try the validity of said claim within twelve months from the passage of the act aforesaid.

9. Said defendant further says, that he is the owner of the follow-

ing described tract of land, to wit: six hundred and forty acres situated in Harrison County, about five miles west of the thirty-fifth mile-post, on the east boundary of the State, surveyed by virtue of certificate number six (6), issued to L. P. Alford by the District Court in and for the County of Panola, at the September term, A. D. 1841, beginning at the northwest corner of Sarah Reynolds' survey, a stake from which a hickory bears N. 71° E. 12 vrs.; another bears south 46° E. 8 vrs., both marked L. P. A.; thence, with the north line of said survey, 1900 vrs. to a stake, from which an ash bears N. 30° W. 8 vrs., a red oak bears N. 65° W. 10 vrs., both marked L. P. A.; thence, north 1900 varas to the east corner of W. W. Pridgen's survey, a stake, from which a red oak bears S. 61° W. $32\frac{6}{10}$ vrs.; another S. $70\frac{1}{2}$ W. 32 vrs., both marked L. A.; thence, west with said Pridgen's south line, 1900 vrs. to a stake from which a black-jack bears South 22° East $15\frac{2}{10}$ vrs.; another bears South 31° E. 26 vrs., both marked L. A.; thence, South 1900 vrs. to the place of beginning; and the said defendant disclaims ownership and possession of any portion of the land described in plaintiff's petition, not included in the metes and bounds of the tract or parcel above set forth; and as to the said tract or parcel of land, the defendant says that he, and the said Alford, under whom defendant claims, was in peaceable and adverse possession of the same for more than three years next before the commencement of this suit, holding the same by the certificate of headright aforesaid, and a patent thereon, with a chain of transfer from the Government of Texas down to the defendant.

And the said defendant suggests to the Court that he, and those under whom he claims, have had adverse possession, in good faith, of the said tract or parcel of land, for more than one year next before the commencement of this suit, and that, during his possession, he has made permanent and valuable improvements on the same, consisting of, to wit: three hundred cleared and fenced, and of divers dwelling-houses, gin-houses, barns, stables, orchards, &c. of great value, to wit: of the value of five thousand dollars.

HENDERSON & HILL,
FRAZER & SHED,
Attorneys for Defendant.

And afterwards, to wit: on the twelfth day of April, in the year of our Lord one thousand eight hundred and fifty, the plaintiff by his attorney, filed his replication and demurrers to the answer and pleas of defendant in the words and of the tenor following, to wit:

(*Replication and Demurrers.*)

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District Court—April Term, 1850.

WILLIAM CHRISTY
vs.
HENRY D. BULLARD. } 170. Trespass.

(*Similiter to 2d plea.*)

2. And the plaintiff by attorney comes, and as to the plea by the defendant secondly, in his answer herein pleaded, whereof said defendant puts himself upon the country, he, said plaintiff, doth the like.

(*Demurrer to 3d plea.*)

3. And the said plaintiff by attorney comes and says, precludi non, by reason of anything in the defendant's third plea in his said answer pleaded, because he says that the said plea and the matters and things therein contained, are insufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer according to the of the statute in such case made and provided, the plaintiff sits down and shows the following, to wit:—

1st. The said plea in bar of the plaintiff's action, attempts to set up the want of the approbation or assent of the executive of the National Government of Mexico to the issuance of a grant within the twenty border leagues, when the National Colonization law, under what is sought the benefit of this bar, contains no prohibition to the issuance of such grant within said border leagues, without the consent of said executive of Mexico; but if at the time of the issuance of said grant, there was any such prohibition, it extended only to making settlements within the said border leagues.

2d. The said third plea, in bar of plaintiff's cause of action, attempts to set up the issuance of a grant under which the plaintiff claims, dated the 20th day of September, 1835, without the approbation of the supreme executive of Mexico within the border leagues, but does not show the nature or kind of said grant, so as to enable the Court to judge of its validity.

3d. And the said third plea is, in other respects, defective, informal and insufficient, &c.

(*Replication to 4th plea.*)

4th. And for replication to the fourth plea by the said defendant in his said answer pleaded, the said plaintiff by his attorney, comes

and says precludi non; because he says the grant under which the said plaintiff claims, was made by an authority at the date of said grant, in the State of Coahuila and Texas existing and competent to make the same; and this he prays may be inquired of by the country.

(*Replication to 5th plea.*)

5th. And for replication to the fifth plea by the said defendant in his said answer pleaded, said plaintiff comes and says precludi non, because he says the grant under which the said plaintiff claims, was not obtained or procured to be issued by fraudulent misrepresentations, as in said fifth plea alleged; and this said plaintiff prays may be inquired of by the country.

(*Demurrer to 6th plea.*)

6th. And to the sixth plea by the said defendant in his said answer pleaded, the said plaintiff says precludi non, because he says the said plea and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid; and this he is ready to verify: wherefore he prays judgment, &c.

And for cause of demurrer according to the form of the statute in such case made, and the said plaintiff sets down and shows the following, to wit:—

1st. The conditions set forth in said plea, as those upon which said grant was issued, as is manifest by said plea, were conditions subsequent, of which the defendant cannot take advantage upon failure in their performance.

2d. A failure to perform the conditions in said plea set out, might have been cause of forfeiture of the estate passed by said grant in said plea set out, on a proceeding in behalf of the State, but is no reason why the defendant, before forfeiture declared, should against plaintiff retain possession of the estate in said grant mentioned.

3d. And the said plea is in other respects defective, informal, and insufficient, &c.

7th. And as to the seventh plea by said defendant in his said answer pleaded, said plaintiff by attorney says precludi non, because he says the said plea and the matters and things therein contained, are insufficient in law to bar and preclude him from having and maintaining his action aforesaid; and this he is ready to verify, wherefore he prays judgment, &c.

And for cause of demurrer according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following, to wit:—

1st. The said plea in bar avers that the estate in the premises in the said plaintiff's petition mentioned, was transferred to the said plaintiff while and during the time he was a citizen of the United States of America, and owing allegiance to the same, and an alien

to the Republic of Texas, yet shows no forfeiture declared, or office found, so as to divest the estate vested by said transfer.

2d. And the said plea is in other respects defective, informal, and insufficient, &c.

(*Demurrer to 8th plea.*)

8th. And as to the eighth plea by the said defendant in his said answer pleaded, said plaintiff says precludi non, because he says the said plea and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid; and this he is ready to verify: wherefore he prays judgment, &c.

And for cause of demurrer according to the form of the statute in such case made and provided, the said plaintiff sits down and shows the following, to wit:—

1. The said act of Congress of the Republic of Texas, referred to in said plea, at the time of the approval thereof since and now, was not and is not the law of the land.

2. The said act of Congress of the Republic of Texas was made and was intended to impair the obligation of contracts.

3. And the said plea is in other respects informal and insufficient, &c.

9. And as to the ninth plea by the said defendant in his said answer pleaded, the said plaintiff, by attorney, says, precludi non, because he says the said plea and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment.

And for cause of demurrer, according to the form of the statute in such case and made and provided, the said plaintiff sets down and shows the following, to wit:—

1. The said plea avers, that the defendant, and those under whom he claims, was in peaceable and adverse possession of the land in the plea mentioned, for three years next before the commencement of this suit by and under a certificate of head right and patent from the government. When the said plea should have been so framed as to set up an adverse possession under one, either the said certificate or the said patent, and not under both, and by himself, unconnected with the possession of another.

2. The said plea, though in bar, does not make any case by which the plaintiff is barred of his action by reason of any possession adverse within the terms of the statute in such case made and provided.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
For Plaintiff.

And afterwards, to wit: at a term of our said District Court begun and held as aforesaid, on the first Monday, being the 6th day of May, in the year of our Lord one thousand eight hundred and fifty, this case was continued until the next term thereafter.

And afterwards, at the December term, A. D. 1850, of said court, to wit: on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-one, the court here passed the following order in the cause, to wit:—

(*Order.*)

WILLIAM CHRISTY
vs.
HENRY D. BULLARD.

In this case it is ordered by the court that the plaintiff have leave to amend by assigning further causes of demurrer.

And thereupon afterwards, to wit: on the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and fifty-one, the plaintiff by his attorney filed his additional causes of demurrer in the words and of the tenor following, that is to say:—

THE UNITED STATES OF AMERICA,
District of Texas, to wit:—

District Court—December Term, 1850.

WILLIAM CHRISTY
vs.
HENRY D. BULLARD. } No. 170. In trespass.

And now at this time the plaintiff by attorney, by leave of the court first had and obtained, files herein the following additional causes of demurrer to the ninth plea by the defendant pleaded, to wit:—

1st. The said defendant by his said plea does not show that he, said defendant, was ever an actual settler upon the said land, of which by his said plea he claims to be in the adverse possession.

2d. The said defendant by his said plea does not aver that the adverse possession which he pleads in bar of plaintiff's action, was under color of title, duly proven and recorded.

3d. The said defendant, by his said plea, attempts to set up in bar of plaintiff's action, an adverse possession under color of title for three years next before the commencement of plaintiff's action, when, by the purview of the statute in such case made and provided, there can be no such bar, but, if any, the bar must be by such adverse possession, under such color of title, for three years next after cause of action accrued, and before commencement of action.

ROB. HUGHES,
For Plaintiff.

And afterwards, to wit: on the eighth day of March, A. D. 1851, that being a day of the last aforesaid term of said court, this cause was continued.

And afterwards, at a term said court begun and held on the second Monday of May, in the year of our Lord one thousand eight hundred and fifty-one, to wit: on the ninth day of July, in the year of our Lord last aforesaid, the following judgment was rendered by the court here in this case, to wit:—

(*Judgment.*)

WILLIAM CHRISTY vs. HENRY D. BULLARD. } Trespass.

This day came the parties aforesaid by their attorneys, and the questions of law arising upon the demurrers of the plaintiff to the sixth, seventh, and eighth plea of the defendant in his original answer pleaded, having been argued and submitted, because it seems to the court that the law is for the defendant, it is considered by the court that the said demurrers be overruled; and the plaintiff by his attorney stating to the court that he intended to abide by his demurrer, it is further considered by the court that the defendant go hence without day; and that the defendant recover of the plaintiff his costs by him about his defence in this behalf expended, to be taxed by the clerk.

And afterwards, at a term of said Court begun and held as aforesaid, on the first Monday of July, in the year of our Lord one thousand eight hundred and fifty-three, to wit: on this third day of August, A. D. 1853, that being a day of said term of said Court, the Court here passed the following order in said cause, to wit:—

(*Order.*)

WILLIAM CHRISTY vs. HENRY D. BULLARD. } Trespass to try title.

This day came the plaintiff aforesaid by his attorney, and it appearing to the satisfaction of the Court, that on the sixth day of October, 1851, the defendant by his attorneys agreed in writing with the attorney of the plaintiff to the effect following, to wit:—

"In the cases known as the 'Christy cases,' in William Christy is plaintiff, and A. Aikin and others, of Harrison County, Texas, are defendants, judgments having been rendered in favor of said defendants, we, the counsel for the plaintiffs and defendants, agree that the plaintiff may select four of said cases in which to prosecute writs of error; and that the decision of the Supreme Court of the United States upon the issues heard and determined in said four cases, shall govern and decide the same issues in the other cases in

which writs of error are not prosecuted by the plaintiff in the same manner as if said writs were prosecuted in them also."

And the plaintiff's attorney, in pursuance of said agreement, having selected the following of said cases, to wit: William Christy *vs.* James D. Finley, No. 173; William Christy *vs.* Hiram Henly, No. 177; William Christy *vs.* William T. Scott, No. 191, and William Christy *vs.* William Young, No. 203; according to said agreement, writs of error were prosecuted in said cases, and at the December Term, 1852, of the Supreme Court of the United States, the questions arising upon the issues in said cases were formally disposed of and determined in favor of the said William Christy, and the judgment reversed, and remanded to this Court for further proceedings; and the mandates of the said Supreme Court are now on file in this Court; and it now appearing to the satisfaction of the Court, that this is one of the cases mentioned in said agreement in which writs of error were not prosecuted, and that the questions of law arising and determined in the said Supreme Court of the United States, on the third, sixth, seventh, eighth, and ninth pleas in the case of William Christy *vs.* William T. Scott, No. 191, are in every respect the same issues arising out of and made in the pleas of like numbers in this case: wherefore, upon the motion of the plaintiff by his attorney, it is ordered by the Court, that this action be, and is hereby reinstated on the Docket of this Court.

And now the questions of law arising upon the demurrers to said pleas coming on, and having been argued, it is considered by the Court that the said demurrers of the said plaintiff to the said third, sixth, seventh, eighth, and ninth pleas, be, and they are hereby sustained; and the defendant may, should he be so advised and think proper, amend his pleadings herein.

And afterwards, to wit: on the 6th day of said month of August, in the year 1853 aforesaid, being also a day of the term last aforesaid, this cause was continued as on affidavit of the defendant.

And now at this day, to wit: on the 18th day of March, A. D. 1854, being day of the January Term of said District Court, the Court here rendered judgment in this cause in the words and of the tenor following, to wit:—

(*Judgment.*)

WILLIAM CHRISTY vs. HENRY D. BULLARD. } 170.

In this cause the death of Henry D. Bullard was suggested by plaintiff, and on motion of plaintiff by his attorney, leave was granted to make Lodovic P. Alford, administrator of said Henry D. Bullard, be made a party defendant; and thereupon this cause came on to be tried: Whereupon came a jury of good and lawful men, to wit: J. W. Moore, James H. Sylvester, Thomas W. Marshal, Elijah

Blackman, John Kellers, Jacob H. Thackaray, David Bryan, Stephen Southwick, Nathan Smith, Edward Keough, Christopher H. Pix, and Robert Moffat, who were duly elected, tried, and sworn, and after having heard the evidence, rendered the following verdict, to wit: "We, the jury, find for the defendant; J. W. More, foreman." It is, therefore, considered by the Court, that the said plaintiff take nothing by his suit, and that the said defendant go hence without day, and that he recover of and from the said plaintiff, his costs by him about his defence in this behalf expended.

And afterwards, to wit: on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-four, the following entry was made in this cause by order of the Court here, to wit:—

(*Order.*)

WILLIAM CHRISTY
vs.
HENRY D. BULLARD.

On this day came the pl'tf by his attorney, and presented the Court his bill of exceptions to the ruling of the Court in the matters of law arising during the progress of the trial of the cause, which were examined, allowed, signed, and sealed, and ordered to be entered of record as of the days on which they *they* were taken.

And thereupon, on the same day and year last aforesaid, the said bill of exceptions was filed, which said bill of exceptions is in the words and figures following, to wit:—

(*Bill of Exceptions.*)

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

WILLIAM CHRISTY
vs.
HENRY D. BULLARD. } Trespass to try title.

Be it remembered, that on the trial of this cause at the present term, to maintain the issue, on his behalf, the plaintiff offered in evidence, and read to the jury without objection, as evidence, a testimonio of the title of possession, issued by Radford Berry, Alcalde of Nacogdoches, on the 22d day of September, A. D. 1835, to Miguel Arciniega, for eleven leagues of land, in Spanish, in the words and figures following, to wit:—

(*Testimonio marked A.*)

Sello 2° Doce reales. Habelelado pr el Estado de Coahuila y Texas para el bienio de 1834 y 1835.

BERRY.

Pago el enteresado in esta adm'n pr. de Nacogdochez doce reales, valor del antecedente sello.
J. ROBERTS, Adm'n.

Ex'mo Sr. El Ciudadano Miguel Arceniega vecino de la ciudad de Bijar, ante V. E. como mas hoya begaren direcho hace presente. Que desde el año de 829 derigio una instancia al Ex'mo Sor. Gov'or que fere de este Estado, pretendiendo various sitios de tierra en los immediaciones del punto de Matagorda conforme al art° 24 de la ley de colonizacion, y por motive de harbersile informado particularmente que aquellos sitios los habia adjudecado, el supremo Gov'no gral de la union a los tres Empresarios Hewizon y Power, se resolvo apresender à otro pedimento hacer a hora y consederando que los mas de los terrenos invidiables pr seis aquas perenes y abundantes maderas, hancedo denunciados y pedidos por diversos habitantes de aquella municipalidad, se vee en el impresindible ceeso de elevar al superior conocimiento de V. E. la presente instancia con el fir de que se digne concederle por via de compra y conforme al art 24° de la refereda ley de colonization, onze sitios de tierra para agosladero en los valdios de este departamento, ya sean todos en un cuerpo ó destenta partis, con tal que sean acomodables para la crea de ganado vacieno y cabrio, en la diligencia qe ofresco poblarlos, cultavarlos, y pagar al islado el valor, conforme a los plazos que el mesmo art° designa, por tanto, A. V. E. reitera see pedimiento que en ello recebera gracea. Villa de Austin, Marzo 1° de 1831. Ex'mo Sor. MIGUEL ARCENEGA. Leona Vecario, 5 de Abril de 1831. Conforme al Art° 24, de la ley colonization de 24 de Mazo de 1825, ortorgo en venta al suplicante los onze setios de tierra que soliceta en los valdios del estado, en el parage que señale, o en el que mas le convenga desperes de demarcados por el comiceonado del sup'mo Gob'no del estaldo general, los suficientes para pago de lo que estado a duda la federacion; El comicianado p'a el repartemiento de terrenos en la empresa a que correspondan los que el representante solicita, y en su defecto ó ne estando estos comprendedos en Empresa alguna, el Alcalde premero, ó el unico de la municipalidad respectiva, compliendo con los despacisiones dadas sobre la materia, lo meta en pocesion de dichas sitios, y expedira el correspondiente titulo, calificando previamente la calidad de ellospara el señalam'to de lo q'e deve satisfacer al estado, para cuyo payo le concedo los plazos que designa Art° 22 de la refereda ley. De se por la Scrio al interesado copia de su peticion, y este provéde, para que ocurriendo con ella al comecienada seirta los efectos que son consequientis. LETONA. SANTIAGO DEL VALLE, Srio. Tachado

en aquella municipalidad, sé vé—aquellas vale. Escopia del original que existe en archivo de la Srio de mi cargo, de donde se mando sacar por dispocesion del Emo sor Gobernador. Leona Vecario, 6 de Abril de 1831. SANTIAGO DEL VALLE, Secretario. Al Señor Alcalde constitucion al de la villa de Nacogdochez. El Ciudadano William G. Logan, vicino de este municipalidad, con el debido respecto a v. se presente diciendo que por los documentos juridicos, que in debeda forma acompañol v closque suplico se me devuelvar. Lay apoderado legitimo de ciudadano Miguel Arceniega veceno de la ciudad de Bejar, segun consta por mesmo documentos en fecha de Bejar, á dia 1° de Julio de este mesmo año, para tomar en pocesion y consequir el titulo de onze sitios de tierra, que fuiron concededos a me decho poderante, por Ex'mo Sor. Gob'or del estado, conforme al art° 24 de la ley de colonizacion de 24 de Mazo, de 1825, y cuyos onze sitios les pueron concede dos enclase de venta por mismo Gobierno. Por tanto a V. suplico en nombre de me citado apoderante me meta en pocesion y me estiende el correspondiente titulo de los citados onze sitios sobre, ó en los inmediaciones del Rio Rojo de Natchitochez. Por tanto, segundo vez A. V. suplico hacer como lengo pededo, y en el recibere gracea, merced y justicia—juro no preceder de malicia y en el necesario. Nacogdochez, 9 de Setembre de 1835. WM. G. LOGAN.

Nacogdochez, 10 Setembre de 1835. Por presentado y admitido en cuanto haya lugar en derecho, con los documentos que acompana, pase este expediente al ciudadano George Aldrich para que practique las mensuras del terreno que la parte solicita, para que procede con todo arreglo a los leyes, y los notas y mapas de medidas que de el formare, me las remitira para que sear traducidas por el ciudadano Juan M. Dor, y con todo a la vista proceder a lo mas que converga, devolvendosele el poder que pide en la instancia que antecede, ase por iste acto lo despuse y ferme cor los dos testigos de me asistencia segun premiere la ley doy fe. RADFORD BERRY—de asistencia T. Lepliche de asistencia Juan M. Dor.—Senor Alcalde constitutional de la villa de Nacogdochez. Los onze sitios de tierra, que por la order antecedente de v hé mededo para el ciudadano Miguel Arceniega, se hallan situados in forma siguiente. Los tres primeras entre el Sabinas y el rio Rojo de Natchitoches al sur de la laguna Sceodo, y empiezan en una mojonera de la cual un nogal encarcela do de deiz y ocho pulgados de diametro, esta al sur viente y ocho grados al oeste á dos varas y tres quintas de distancia, y un encino colorado de veinte pulgados de diametro, esta al norte viente grados al oeste, á tres varas de distancia; de alli al norte se medieron cinco mil varas, interseadas à las mil y cuatro cientos por una cañada, corriendo al este, a los tres mil y dos cientos por un arroyo corriendo al este tambien, y se levanto la segunda mojonera, de la cual un nogal encarcelado de quince pulgadas de diametro esta al norte setenta grados al oeste a onze varas de distancea, y un encino de quince pulgados de diametro esta al sur catorce grados al este a cuatro varas y quinte; de alli al oeste se medieron quince mil varas,

intersecadas a las dos mil y cuatro cientos por un arroyo corriendo al sudeste, a las cinco mil por una cañado corriendo al nordeste, a los siete mil por otra cañada corriendo tambien al nordeste, a los doce mil mil y dos cientos por un arroyo corriendo igualmente al nordeste, y se levanto la tercera mojonera, de la cual un encino de quince pulgados de diametro esta al norte cuatro grados al este al cinco varas y dos quintas de distancia; de alli al sur se medieron cinco mil varas, intersecadas a los ciento por una cañada corriendo al este; a los tres mil y cuatro cientos por otra cañada a corriendo tambien al este, y se levanti la cuatro y ultima mojonera, de la cual un encino chino de doce pulgadas de diametro esta al norte treinta y tres gradas al oeste a tres varas y dos quintas de distancia, y otro encino chiro catorce pulgados de diametro esta al sur setenta y ocho grados al este à cinco varas y dos quintas de distancia, y de alli al este se medieron basta la primera mojonera quince mil varas intersecadas, a los seis mil y setecientos por una cañada corriendo sudeste, à los once mil y cuatro cientos por otro cañada corriendo tambien al sudeste y a las trice mil y cuatrocientos por otra cañada corriendo igualmente al sudeste, y se completaron tres sitios de tierra, de setenta y cinco millones de varas cudradas, del referida terreno pertenecen quince labores a la clase de temporal, y las sesenta ustantes á la de agostadora, siendo su configeracion la que in duplicado le acompaño tachado—ensino; non vale—entrerenglones—nogal encarcelando—vale. El cuatro sitio de tierra se halla como los anteriores entre el Sabina y rio Rojo de Natchitoches, al sur de la laguna Sciodo, y empieza en una mojonera de la cual un encino colorado de diez y ocho pulgados de diametro esta al norte cuarenta y cuatro grados al oeste a nueve varas y tres quintas de distancia, y un nogal encearcelado de diez pulgadas de diametro esta al sur ochenta y cuatro gradas al este a seis varas y tres quintas de distancia; de alli al norte se medieron cinco mil varas, intersecadas a los quatro cientos por un arroyo de diez varas de ancho corriendo al este a los mil y dos cientos por ocho arroyo de quince varas de ancho, corriendo tambien al este, a los cuatro mil y quinientos por otro arroyo de diez varas de ancho, corriendo tambien al este, y se levanto la segunda mojonera de la cual un encino colorado de diez y ocho pulgados de diametro esta al sur sensenta and seis grados al este, a cuatro varas y quinta de distancia y un enceno roble de doce pulgados de diametro esta al norte setenta y siete gradas al este, catorce varas de distancia, de alli al oeste se medieron cinco mil varas y se levanti la tercera mojonera, de la cual un nogal encarcelado de diez y ocho pulados de diametro esta al sur veinte y ocho grados al oeste dos varas y tres quintas de distancia, y un encino colorado de viente pulgados de diametro, esta al norte veinte grados al oeste á tres varas de distancia, de alli al sur se medieron cinco mil varas, intersecada a las mil por un arroyo de diez varas de ancho corriendo al este, a los mil y cuatro cientas por otro arroyo de diez varas de ancho, corriendo tambien al este, á los dos mil y seis cientos por otro arroyo de diez varas de ancho corriendo igualmente al este, a los cuatro mil y trecientos por una cañada corriendo lo mismo al

este, y se levanto la cuatro y ultima mojonera, de la cual un ongal encarcilado de quince pulgados de diametro esta al norte quince al este á tres varas de distancia, y otro nogal encarcelado de quince pulgados de diametro esta al sur ochenta y ocho gradas al oeste, á diez y seis varas de distancia; y de alli hasta la primera mojonera se medieron al este cinco mil varas, intersecadas, a los tres mil por un arroyo de diez varas de ancho corriendo al nordeste complelandose asi el citado cuatro sitio de tierra que consta de veinte y cinco millones de varas cuadrados, del referido terreno pertenecen seis labores a la clase de temporal y dies y nueve restantes a la agastadero, siendo su configuracion la que en duplicado le acompaño, y seis maderas, el olmo, el nogal encarcelado, el encino, el encino chino, el sassafras &c. El quinto citio de tierra se halla entre el Sabina y rio Rojo de Natchitochez, al sur de laguna Sciodo en terrenos ocupados po los Indios Cadoes, y empieza en una mojonera de la cual un encino colorado de diez y ocho pulgados de diametro, esta al sur sesenta y seis grados al oeste a cuatro varas y quinta de distancia, y un encino Roble de doce pulgados de diametro esta al note setenta y siete grados al este á catorce varas de distancia; de alli al norte se medieron cenco mil varas, intersecadas á los ciento por una cañada corriendo al este, á los mil y novicientos por un arroyo de diez var de ancho corriendo al este tambien, a los dos mil y seis cientos por una cañada corriendo al sudiste, y se levanto la sequinda mojonera de la cual un inceno chino de diez y seis pulgadas de diametro esta al sur dehenta socho grados al oeste a cuatro varas y cuatro quintas de distancia, y un nogal incurcelado de catorce pulgados de diametro, esta al norte cuarenta y tres gradas al este á siete varas de distancia, de alli al oeste de medieron cinco mil varas y se levanto la tircera mojonera, de la cual un inceno de quince pulgados de diametro esta al sur catorce grados al este á cuatro varas y quinta de distancia y un nogal encarcelado de quince pulgados de diametro esta al norte setenta grados al oste á once varas de distancia; de alli al sur se medieron cinco mil varas intersecadas á las dos mil y ciento por un cañada corriendo al este, y se levanto la cuatro y ultima mojonera, de la cual un nogal encarsilado de diez y ocho pulgados in diametro esta al sur viente y ocho grados al oesté, á dos varas y tris quintas de distancia y un encino colorado de vinte pulgados de diametro, esta al norte veinte gradas al oste á tres varas de distancia; de alli al este se medieron cinco mil varas hasta la primera mojonera, completandose asi, el quinta sitio de tierra que consta de veinte y cinco millones de varas cuadradas. Del referedo terreno, pertinecen cinco labores a la clase de temporal, y veinte restanles, a la de agosta daro, siendo su configeracion, la que en duplicado le acompaño, y sus moderas, el olmo, el fresno, el copal, el sasafras, y el nogal incarcelado, &c. &c. El sexto, el septimo, el octavo, y el norenoestan situados en el sulphur fork circa de rio Rojo de Natchitochez, á *unas* treinta y cinco millas al oste del camino que va de Nacogdochez acaimichi de rio de Rojo de Natchitoches, y impieza en el anegadizo de Sulphur Fork, a

quinientos cuarenta varas de su orilla on donde se levanto la primera mojonera, de alli al oeste se medieron diez mil varas, intersecadas a las tres mil y ochocientos por una cañada corriendo al sudeste, a los siete mil y sus cientas, por el mencionada sulphur fork de treinta varas de ancho corriendo al sudeste y se levanto la segunda mojonera; de alli al norte, se medieron diez mil varas, intersecados a los mil y ciento por dicho sulphur fork de treinta varas de ancho corriendo al sudeste, a los siete mil y quinientas por un arroyo de diez varas de ancho, corriendo tambien al sudeste, y se levanto en un llano la tercera mojonera, de la cual un encino blanco de veinte pulgados de diametro esta al norte sesenta y dos grados al este á ciento treinta y siete varas y dos quintos de distancia, y otro encino blanco de quince pulgados de diametro está al norte setenta y dos grados al este ciento treinta y ocho varas y dos quintos de distancia, de alli al este se medieron diez mil varas intersecados, a los dos cientas varas, por una cañada corriendo al sudeste, á los dos mil y novecientos por otro cañada corriendo al sur, a los cuatro mil y ochocientos sesenta por otro cañada corriendo al sudeste, a los cinco mil por una mojonera que se levanto en un llano, de la ceral un nogal pacano de quince pulgados de diametro esta al sur veinte y seis grodos al este, a treinta y tres varas y quinta de distancia, y un enceno chino de diez y seis pulgados de diametro esta el norte veinte y cinco grados al oeste, a ochinta varas de distancia, a los seis mil novecientas y cuarenta por un arroyo de diez varas de ancho corriendo al sudeste y se levanto la cuatro y ultima mojonera en un llano, sin palos de testigas, por no haber los en los inmediaciones, y se medieron al sur, hasta prinera mojonera dris mil varas, intersecadas a los dos mil y ochocientos por un arroyo corriendo al sudeste, de diez varas de ancho, a los ocho mil y dos cientas por otro arroyo de quince varas de ancho, corriendo tambien al sudeste, completandose asi el ameo de cuatro sitios de tierra, que constan de cien mil varas cudradas; del referido terreno pertinencen veinte labores a la clase de temporal y los ochente restantes a la de agostadero, siendo su configeracion la que en duplicado le acompaño, y sur maderas, el nogal pacano, el olmo, el pelo blanco, el fresno, el nogal incarcelando, el enceno &c. El decimo sitio de tierra esta situado en el margin del rio Royo de Natchitoches y es el primero, frente a el mas abajo de arroyo del mineral, en donde se levanto la primera mojonera, de la ceral un cedro de diez y seis pulgados de diametro, esta al sur treinta y ocho grados al este, á cenco varas de distancia, y un nogal encarcilado de diez pulgados de diametro, esta al norte catorce grundos al oeste, a tres varas y dos quintas de distancia, y segundolo sus vuellas agua abayo, se medieron al seor treinta y ocho grados al este quinientos quarenta varas, al norte setenta y un grados al este, dos mil y cinco varas y se levanto en el mismo margin la segunda mojonera, de la cual ur hayagil, or ha freso de doce pulgados de diametro esta el sur ochenta y cinco grados al este á siete varas y dos quintas de distancia, de alli al sur se medieron diez mil dos cientas cincuenta y tres varas, y se levanto la ter-

ceira mojonera, de alli se medieron dos mil y quinientos varas y se levanto la cuatra & ultima mojonera, y de alle al norte de medieron nueve mil setecientas nueve varas, hasta la primera mojonera, completandose asi el apeo de decimo sitio de tierra, que consta de veinte y cinco millones de varas cuaddradas, del referido terreno pertinecen, seis labores a la clas de temporal, y los diez y nueve restantes a la de agastadaro, siendo su configeracion la que en duplicado le acompaño, y sus maderas, el cedro, el fresno, el nogal prieto, el nogal encarcelado, &c. &c. &c. El un decimo y ultimo sitio de tierra, se hallan situado en el margin derecho del rio Rojo de Natchitochez, y es el segundo frente a el mas abajo del arroyo del mineral, y impeza en el margin de decho rio, en un mojonera de la ceral un fresno de doce pulgados de diametro esta al sur ochento y cinco grados al oeste á siete vas y dos quintas de distancia, y un cedro de vente pulgados de diametro esta al norte ochento y cinco grados al este, á seis varas y tres quintas de distancia; de alli seguendo la por seis vueltas agua abajo se medieron al norte senta y un grados el este, dos mil seis cientos cincuenta varas, y se levanto la segunda mojonera, de la ceral un encino de veinte pulgados de diametro, esta el sur cuarenta varas y dos quintas de distancia, y otro encino de catorce pulgados de diametro, esta al norte sesenta y seis grados al este, á seis varas y dos quintas de distancia; de alli al seir se medieron diez mil y cuatro cientas veinte y dos varas y se levanto la tircera mojonera, de alli al oeste, se medieron dos mil y quinientas varas y se levanto la cuatro mojonera que fue la ultima, y de alli al norte se medieron nueve mil y quinientas setenta y seis varas hasta la primera mojonera, complitandose asi el apio del undecimo y ultimo sitio de tierra de la concession del expresado ciudadano Miguel Arceniega, qui consta como todas las demas, de veinte y cinco millones de varas cuadradas. Del referido terreno pertenecen seis labores á la clase de temporal, y los diez y nueve restantes á los de agostadaro, siendo su configeracion la que en duplicado le decompaño, y sus maderas, el cedro, el fresno, el encino, el nogal prieto, el encarcelado, el olmo, &c. &c. GEORGE ALDRICH, agrimensor. Juan M. Dor, traductor. Nacogdochez, y Setembra 18, de 1835. Estando concluido la mensura de los once sitios de tierra que contiener los antecedentes notas pacticadas por el agrimensor nombrado al efecto, que el ciudadano Wm. G. Logan, legal apoderado del ciudadano Miguel Arceniega solicito en memorial de so fecha de nueve del que rige, de que obra este expediente, extiendose el titulo correspondiente, y de los doce mapas que presento el agrimensor George Aldrich, agregerse seis a este, expedient, y otro seis al testimonio. Asi lo determine y firme con los dos testigos de me asistencia, segun la ley, day fe. RADFORD BERRY, de asistencia T. Leplicher, de asistencia Juan M. Dor. El ciudadano Radford Berry, alcalde unico constitutional de la villa de Nacogdochez, y comicionado por el supremo gobierno de estado para poner in posecion formal, al ciudadano Miguel Arceniega que como comprador le tiene concedido once sitios de tierra in este departamento de Nacogdochez. Por

cuantò el citado Miguel Arceniega, vecino de la ciudad de Bejar tiene concedidos por el Excelentisimo Señor Gobernador once sitios de tierra en clase de comprador segun consta del superior decreto de fecho cenco de Abril de mil ochocientos treinta y ano, que en copia autenticada, ha presentado el referido Miguel Arceniega, por su apoderado Wm. G. Logan y es la misma que hace cabeza de este expediente; en nombre del estado, le confiero, concedido y meto en posecion efectiva y personal de onze sitios de tierra como comprador, los cuales dechos once sitios de tierra islan situados los tres primeras juntas, entre el Sabinas y rio Rojo de Natchitochez, al sur la laguna Sciodo, y constan de quince labores de temporal, el cuatro tambien entre el Sabina y rio Rojo de Natchitochez, al sur de laguna Sciodo y consta de seis labores de temporal, el quinto igualmente entre el Sabina y rio Rojo de Natchitochez, al sur de la laguna Sciodo, en terrenos ocupados por los Indios Cadoes, y constan de cinco labores de temporal el sexto, el septimo, el octavo, y el noveno, tula todas juntas, en el sulphur fork de rio Rojo Natchitoches, á anos treinta y cinco millas del camino que ra de Nacogdoches al Caimiche del rio Rojo de Natchitoches, y constan de veinte labores de temporal, el decimo en el margin derecho de Rio Rojo de Natchitoches, siendo el primero frente al rio mas abajo del arroyo mineral, y consta de seis labores de temporal, y el undecimo y ultimo en el mismo rio colindanti con el decimo, y consta como el de seis labores de temporal, y sus linderos por menor estan demarcados en las notas de medidas y mapas puestas por agrimensor ciudadano George Aldrich, los que obran originales agregadas a este dicho expediente, de los expresados once sitios de tierra pertinecen cencuenta y ocho labores a la clase de temporal y los dos cientas diez y sicle a la de agostadiro, con arreglo a lo cual diverse satisfacer al estado la cantidad de triscientas noventa y cinco pesos, tres reales y cartillo de conformidad con lo despreesto en el articulo veinte y dos de la ley de colonizacion de veinte y cuatro de Marzo de mil ochocientos veinte y cinco en los plazos que concede el mismo articulo, bayo las penas en el establicidas, quedando advertido que dentro de un año dibera construir mojoneras, fejas y permanentes en todas los angulos de los terrenos mincionadas, y que tambien debe poblarlas, y cultivados, con todo arreglo á lo despuesto en la referida ley, compliendo escrupulosamente con todo cuante en ella y otra se ordina, y que jamas los ha de pasar en *manos muertos*. Por tanto; usando de los facultades que me son concedidas, a virtud del superior decreto de cinco de Abril de mil ochocientos treinta y uno espido el presente titulo, y mando se saque testimonio de el, y se intrigue al interesado, para que posid y dispute por suyos proprios, los citados once sitios de tierra que se le ha otogado, el sus hijos, herederas y sucesores, ó quien de el, o de ellos causa hubiere, accion ó direcho representare, por ser asi la voluntad del estado, esdado en la villa de Nacogdochez, a los veinte y dos dias del mes de Setiembre de mil ochocientos treinta y cinco años, fermandolo yo dicho alcalde con los dos testigos de me asistencia—

inmendado—seis—vale—intre renglones. WM. G. LOGAN—vale—doy fe RADFORD BERRY, de asistencia T. Lepliche, de asistencia Juan M. Dor. Concuerda esta testimonio con see original que existe en el archivo de la comision de me cargo de donde se saco por me disposicion, va fiel y legalmente copiado confrontado y corregido in tres fojas utiles y necesarios del sello correspondiente y para see debida constancia lofirmo con dos testigos de me asistencia en la villa de Nacogdoches, a los veinte dos deas del mes de Setiembre de mil ochocientos treinta y cinco años, doy fe.

RADFORD BERRY,

De asistencia
BENNETT BLAKE.

De asistencia
JUAN M. DOR.

I do hereby certify, that the foregoing deed has been duly recorded in my office in the book of Spanish deeds, pages from No. 21 to 36, as accurately as possibly could be by any person not acquainted with the Spanish language, this the 20th day of October, A. D. 1848.

EDWARD C. BEAZLEY,
C. Clk.

By E. CATER,
Dep't.

The said plaintiff then offered to read, and did read without objection, an agreed translation of the testimonio aforesaid, in the words and figures following, to wit:—

(*Translation of Testimonio, marked B.*)

Second seal; twelve reals, legalized for the State of Coahuila and Texas for the two years of 1834 and 1835.

BERRY.

The interested party has paid into this office for Nacogdoches, twelve reals, the value of the preceding seal.

J. ROBERTS,
Adm'r.

MOST EXCELLENT SENIOR:

The citizen Miguel Arceniega, a resident of Bexar, before your Excellency as far as has place in right, reports that since the year 1829, he directed a petition to the Most Excellent Governor of the State, applying for various leagues of land in the immediate vicinity of the port of Matagorda, in conformity to the twenty-fourth article of the colonization law, and by reason of having been informed that those leagues had been adjudicated by the Supreme General Government of the Nation, to the Seniors the Empresarios Hewetson and Power, he has resolved to resort to another petition, which is now

made; and considering that most of the lands desirable by their water and abundant timber have been denounced and asked for by divers inhabitants of that municipality, he finds himself under the necessity of bringing to the superior knowledge of your Excellency the present petition, with the view that you will please to concede to me by way of sale, and in conformity to the 24th article of the referred to law of colonization, eleven leagues of land for grazing in those vacant of this department, either in one body, or in distinct parts, provided they may be convenient for the raising stock of the cow kind, and goats, with the understanding that he offers to cultivate, settle and pay for them the value to the State, in conformity to the terms designated in said article for so much, he repeats his petition, in which he will receive favor.

Town of AUSTIN, *March 1st*, 1831.

(Most Excellent Senior.) MIGUEL ARCINIEGA.

LEONA VECARIO, *5th of April*, 1831.

In conformity with the 24th article of the law of colonization of the 24th of March, 1825, I concede in sale to the petitioner the eleven leagues of land which he asks in the vacant lands of the State in the place designated, or in that more convenient, after the demand by the commissioners of the general government of a sufficient for the payment of that which the State is indebted to the federation. The Commissioner for the distribution of land, in the empresa to which belongs those which the petitioner asks, and in his absence, or not being comprehended within any empresa, the first or only alcalde of the respective municipality complying with the depositions given in relation to the subject, will give possession of said leagues, and despatch the corresponding title, previously classifying the quality of them for the ascertainment of that which ought to be paid to the State, for which payment I grant the terms designated in article twenty-two of the law referred to. Given by the secretary of the interested party, a copy of this his petition and this decree, in order that going with it to the Commissioner, the effects may be had which are consequent.

LETINA.

SANTIAGO DEL VALLE,
Secretary.

This is a copy of the original which remains in the archives of the secretary's office under my charge, whence I am commanded to take it by direction of the Most Excellent Senior, the Governor.

LEONA VECARIO, *6th April*, 1831.

SANTIAGO DEL VALLE,
Secretary.

(*Petition.*)

The Senior Constitutional Alcalde of the Town of Nacogdoches:

The citizen William G. Logan, a resident of this municipality, with the proper respect presents himself to you saying, that by the judicial documents, which in proper form are presented with this to you (and which he prays to be returned): I am the legitimate attorney of Miguel Arciniega, a resident of the City of Bexar, as appears by said document, dated at the City of Bexar, the 1st day of July of this year, for the purpose of taking possession and obtaining the title to eleven leagues of land, which were conceded to my said constituent by the Most Excellent Governor of the State, in conformity to the 24th article of the law of colonization of the 24th day of March, 1825, and which eleven leagues were conceded in the class of sale by the same government. For so much in the name of my constituent, I request you to place me in possession, and extend the corresponding title of said eleven leagues upon or in the immediate neighborhood of the Red River of Natchitoches: Again, a second time I request you to do as I have asked, and in which I will receive grace, favor, and justice: I swear not to proceed in malice, but of necessity.

NACOGDOCHES, *9th September*, 1835.

WM. G. LOGAN.

(*Order of Survey.*)

NACOGDOCHES, *10th September*, 1835.

Presented and admitted in as far as there is place in right with the documents annexed: pass this dispatch to the citizen George Aldrich, so that he may make a survey of the land which the party solicits, in order to a proceeding according to every regulation, and the notes and marks of survey which afit you shall make, you shall forward to me for translation by the citizen John M. Dor, and with all in view to proceed according to that more convenient: let the power asked for in the preceding petition be returned. Thus by this act, I decree and sign, with the two witnesses of my assistance as the law provides, I give faith.

RADFORD BERRY.

Ass. T. LEPLITCHER.

Ass. JOHN M. DOR.

Senior Constitutional Alcalde of the Town of Nacogdoches:

The eleven leagues of land which by your preceding order I have surveyed for the citizen Miguel Arciniega, is found situated in the form following:—

(*Survey. Survey No.* 1; *three leagues.*)

The three first between the Sabine and Red River of Natchitoches, south of Soda Lake, and commences at a corner from which a hickory, eighteen inches in diameter, is south twenty-eight degrees west, two and three-fifths varas distant, and a red oak, twenty inches in diameter, is north, twenty degrees west, three varas distant. Thence run north, five thousand varas, intersecting at one thousand four hundred varas a valley running east; at three thousand two hundred, a creek, also running east, and raised the second corner, from which a hickory, fifteen inches in diameter, is north, seventy degrees west, eleven varas distant, and an oak, fifteen inches in diameter, is south, fourteen degrees east, four and one-fifth varas; thence run fifteen varas west, intersecting at two thousand four hundred varas, a creek running southeast; at five thousand, a valley running northeast; at seven thousand, another valley running also northeast; at twelve thousand two hundred, a creek running also northeast, and raised the third corner, from which a black-jack, fifteen inches in diameter, is north, four degrees east, five and two-fifth varas distant; thence run south five thousand varas, intersecting at one hundred varas, a valley running east; at three thousand four hundred varas, another valley running also east, and raised the fourth and last corner, from which a black-jack, twelve inches in diameter, is north, thirty-three degrees west, three and two-fifth varas distant, and another black-jack, fourteen inches in diameter, is south, seventy-eight degrees east, five and two-fifth varas distant; thence run east fifteen thousand varas, to the first corner, intersecting at six thousand seven hundred varas a valley running southeast, at eleven thousand four hundred, another valley running also southeast; and at thirteen thousand four hundred another valley running also southeast; and completed three leagues of land, of seventy-five million varas. Of the land referred to, fifteen labors belong to the class of temporal, and sixty to pasture land; its figure being that which in duplicate is annexed.

The fourth league of land, like the last, is found between the Sabine and the Red River of Natchitoches, south of Soda Lake, beginning at a corner from which a red oak, eighteen inches in diameter, is north, forty-four degrees west, nine and three-fifths varas distant, and a hickory, two inches in diameter, is south, eighty-four degrees east, six and three-fifths varas distant; thence run north five thousand varas, a creek of two varas in width, running east, at one thousand two hundred; another creek, fifteen varas in width, running also east, at four thousand five hundred varas; another creek of ten varas in width, running also east, and raised the second corner, from which a red oak, eighteen inches in diameter, is south, sixty-six degrees west, four and one-fifth varas distant, and an overcup oak, of twelve inches in diameter, is north, seventy-seven degrees west, fourteen varas distant; thence run west five thousand varas, and

raised the third corner, from which a hickory, eighteen inches in diameter, is south, twenty-eight degrees west, two and three-fifth

(*Survey No.* 2; *one league.*)

varas distant, and a red oak, twenty inches in diameter, is north, twenty degrees west, three varas distant; thence run south, five thousand varas, intersecting at one thousand a creek, ten varas in width, running east, at one thousand four hundred; another creek, ten varas in width, running also east; at two thousand six hundred another creek ten varas in width, running also east; at four thousand three hundred a valley running also east, and raised the fourth and last corner, from which a hickory, fifteen inches in diameter, is north, fifteen degrees east, three varas distant; and another hickory, fifteen inches in diameter, is south, eighty-eight degrees west, sixteen varas distant; thence run to the first corner east, five thousand varas, intersecting at three thousand a creek ten varas in width, running northeast, completing this the fourth league of land, which contains twenty-five million square varas. Of the said land, six labors belong to the class of temporal, and the nineteen remaining to pasture land, being in form that which in duplicate is annexed, its timber being elm, hickory, oak, black-jack, sassafras, &c.

(*Survey No.* 3; *one league.*)

The fifth league of land is found between the Sabine and the Red River of Natchitoches, south of Soda Lake, in lands occupied by the Cado Indians, and beginning at a corner from which a red oak, eighteen inches in diameter, is south, sixty degrees west, four and one-fifth varas distant, and an overcup oak, twelve inches in diameter, is north, seventy-seven degrees east, fourteen varas distant; thence north, run five thousand varas, intersecting at one hundred varas a valley running east; at one thousand nine hundred a creek ten varas in width, running also east; at two thousand six hundred a valley running southeast, and raised the second corner, from which a black-jack, sixteen inches in diameter, is south, eighty-eight degrees west, four and four-fifths varas distant, and a hickory, fourteen inches in diameter, is north, forty-three degrees east, seven varas distant; thence run west five thousand varas, and raised the third corner, from which an oak, fifteen inches in diameter is south, fourteen degrees east, four and one-fifth varas distant; and a hickory, fifteen inches in diameter, is north, seventy degrees west, eleven varas distant; thence run south, five thousand varas, intersecting at two thousand one hundred varas, a valley running east, and raised the fourth and last corner, from which a hickory, eighteen inches in diameter, is south twenty-eight degrees west, two and three-fifth varas distant, and a red oak, twenty inches in diameter, is north, twenty degrees west, three varas distant; thence run east five thousand varas to the first corner, completing this, the fifth league of land, which contains twenty-five million square varas. Of the said

land five labors belong to the class of temporal, and the twenty remaining to that of pasture land, the former being that which in duplicate is annexed, and its timber, elm, ash, gum, sassafras, and hickory, &c.

(*Survey No* 4; *four leagues.*)

The sixth, seventh, eighth, and ninth, on the Sulphur Fork, near the Red River of Natchitoches, thirty-five miles west of the road from Nacogdoches to the Kiamichi of the Red River of Nacogdoches in the overflow of the Sulphur Fork, five hundred and forty varas from its bank, where was raised the first corner; thence run west ten thousand varas, intersecting at three thousand eight hundred varas a valley running southeast, at seven thousand six hundred, the said Sulphur Fork, thirty varas in width; run southeast, and raised the second corners; thence north run ten thousand varas, intersectin gat one thousand one hundred varas said Sulphur Fork, thirty varas in width, running southeast, at seven thousand five hundred varas, a creek ten varas in width, running also southeast, and raised the third corner, from which a post oak twenty inches in diameter, is north sixty-two degrees east, one hundred and thirty-seven and two-fifth varas distant, and another post oak fifteen inches in diameter, is north seventy-two degrees east, one hundred and thirty-eight and two-fifth varas distant; thence run east two thousand varas, intersecting at two hundred and twenty, a valley running southeast, at two thousand nine hundred, another valley running south, at four thousand eight hundred and sixty, another valley running southeast; at five thousand, a corner raised in the plain, from which a pecan fifteen inches in diameter is south, twenty-six degrees east, thirty-three and one-fifth varas distant, and a black-jack, sixteen inches in diameter, is north twenty-five degrees west, eighty varas distant, at six thousand nine hundred and forty, a creek, ten varas in width, running southeast, and raised the fourth and last corner in the plain, without bearing trees, not having them in the vicinity; thence south to the first corner, ten thousand varas, intersecting at two thousand eight hundred varas a creek running southeast, ten varas in width, at eight thousand two hundred another creek fifteen varas in width, running also southeast; which contains one hundred million square varas. Of the said land twenty labors belong to the class of temporal, and the eighty remaining to that of grazing, its figure being that which in duplicate is annexed; and its timber is pecan, elm, hackberry, ash, hickory, oak, &c.

The tenth league is situated on the Red River of Natchitoches, and is the first in front, and rather below the Mineral Creek, where was raised the first corner, from which a cedar, sixteen inches in diameter, is south thirty-eight degrees east, five varas distant, and a hickory ten inches is north, fourteen degrees west, three ard two-fifth varas distant, and following the meanders, descending the river, south thirty-eight degrees east, five hundred and fifty varas north, seventy degrees east, two thousand one hundred varas, and raised on the same

margin of the river the second corner, from which a beech, or it may be an ash, twelve inches in diameter, is south eighty, and five degrees west, seven and two-fifth varas distant; thence run south ten thousand two hundred and fifty-three varas, and raised the third corner; thence run west, two thousand five hundred varas, and raised the fourth and last corner; thence run north nine thousand seven hundred and nine varas to the first corner, thus completing the boundary of the tenth league, which contains twenty-five million square varas. Of the said land, six labors belong to the class of temporal, and the remaining nine to that of pasture land; its form being that which in duplicate is annexed; and its timber, cedar, ash, elm, black walnut, hickory, &c.

The eleventh and last league of land is found situated on the right margin of the Red River of Natchitoches, and is the second fronting and rather below the Mineral Creek, and beginning on the margin of said river at a corner, from which an ash twelve inches in diameter is south, eighty-five degrees west, seven and two-fifth varas distant, and a cedar, twenty inches in diameter, is north, eighty-five degrees east, six and three-fifth varas distant; thence following the meanders of the river downwards, north seventy-one degrees east, two thousand six hundred and fifty varas, and raised the second corner, from which an oak, twenty inches in diameter, is south forty-two degrees west, three and two-fifth varas distant, and another oak, fourteen inches in diameter, is north, sixty-six degrees west, six and two-fifth varas distant; thence run south ten thousand four hundred and twenty-two varas, and raised the third corner; thence run west two thousand five hundred varas, and raised the fourth and last corner; thence north run nine thousand five hundred and seventy-six varas, to the first corner, completing thus the boundary of the eleventh and last league of the land conceded to the said citizen Miguel Arciniega, which like all the others, contains twenty-five million square varas. Of the said land, six labors belong to the class of temporal, and the remaining nineteen to that of pasture land, its form being that which in duplicate is annexed, and its timber is black walnut, hickory, elm, &c.

JOHN M. DOR. GEORGE ALDRICH.

NACOGDOCHES, *September* 18*th*, 1835.

The survey being concluded of the eleven leagues of land contained in the preceding notes, made by the surveyor appointed for that purpose, which the citizen William G. Logan, the legal attorney for the citizen Miguel Arciniega, solicited in his memorial of the date of the ninth of that which now is, when this despatch was made, the corresponding title extended, and the twelve maps presented by the surveyor, George Aldrich, annexed to this despatch, and the other testimonio, thus I determine and sign, with two witnesses of my assistance, according to law. I certify.

RADFORD BERRY.

ASS. ASS.
T. LEPLICHER. JOHN M. DOR.

The citizen Radford Berry, and constitutional alcalde of the town of Nacogdoches, and commissioned by the Supreme Government of the State to place in formal possession the Citizen Miguel Arciniega, who as purchaser has conceded to him eleven leagues of land in this Department of Nacogdoches: Forasmuch as the said Miguel Arciniega, a resident of the town of Bexar, has conceded to him by the most excellent senior, the Governor, eleven leagues of land, in the class of purchases as appears by the superior decree of the date of the 5th day of April, 1831, which in an authenticated copy said Miguel Arciniega has presented by his attorney, William G. Logan, and is the same which is at the head of this dispatch: In the name of the State, I confer, concede and place him in possession, effective and personal, of eleven leagues of land, as purchaser, which said eleven leagues of land are situated, the three first united, between the Sabine and the Red River of Natchitoches, south of Soda Lake, and contain fifteen labors of temporal land: the fourth also between the Sabine and the Red River of Natchitoches, south of Soda Lake, and contains six labors of temporal land: the fifth likewise between the Sabine and the Red River of Natchitoches south of Soda Lake, in lands occupied by the Cado Indians, and contains five labors of temporal land: the sixth, seventh, eighth, and ninth all united, on the Sulphur Fork of Red River of Natchitoches, thirty-five miles from the road which runs from Nacogdoches to Kiamechi of the Red River of Natchitoches, and contains twenty labors of temporal land; the tenth, on the right margin of the Red River of Natchitoches, being the first fronting on the river rather below Mineral Creek, and contains six labors of temporal land; and the eleventh and last, on the same river, bounding on the tenth, and contains six labors of temporal land, and their lines, at the least, are indicated in the notes of survey and marks, given by the Surveyor, George Aldrich, the originals of which are annexed to this dispatch. Of the said eleven leagues of land, fifty-eight belong to the class of temporal, and two hundred and seventeen to that of pasture land, for which, according to the rule, he ought to pay to the State the quantity of three hundred and ninety-five dollars, three reals and one-fourth of a real, in conformity with the provisions of article twenty-two of the law of Colonization of the 24th day of March, 1835, on the terms conceded in said article, under the penalty established in it: with the understanding that within one year, he ought to construct corners, fixed and permanent, in all the corners of the before-mentioned land, and also ought to settle and cultivate, according to the rule established by the referred to law, complying scrupulously with whatever else in it or another is ordered, and that it can never pass in mortmain. For so much, using the faculties which are conceded to me, in virtue of the superior decree of the 5th of April, 1831, I despatch the present title, and command a testimonio thereof to be taken, and delivered to the party interested, so that he may possess and take the fruits on his

own account, of the said eleven leagues of land, which to him I have granted, him, his children, heirs and successors, or whoever of him or of them shall have action or right in representation, for such is the rule of the State.

This, given in the town of Nacogdoches, the twenty-second day of the month of September, in the year one thousand eight hundred and thirty-five; I, said alcalde, signing with two witnesses of my assistance,—amended—Sece—lu good—interlined—"Wm. G. Logan"—lu good—I certify.

RADFORD BERRY.

Ass. Ass.
T. LEPLICHER. JOHN M. DOR.

This testimonio agrees with the original which remains in the archives of the commission of my charge, whence it is taken by my direction, being truly and legally copied, compared and corrected, on thirteen lawful and necessary leaves of the corresponding seal, and for its due perpetuity, I sign with two witnesses of my assistance, in the town of Nacogdoches, the 22d day of the month of September, in the year one thousand eight hundred and thirty-five. I certify.

RADFORD BERRY.

Ass. Ass.
BENNETT BLAKE. JOHN M. DOR.

The plaintiff then read, without objection, a testimonio of a power of attorney from Miguel Arciniega to William G. Logan, in Spanish, of the date of the 1st July, A. D. 1835, executed before and certified by Luciano Navarro, primary judge of the City of Bexar, which is in the words and figures following, to wit:—

Sello Segundo
Para el Bienio [L. S.] Doce reales
de 1832 & 1833, 1834 y 1835.
FLOREZ.

In la ciudad de Bexar de Julio de mil ochientos treinta y cinco me el ciudadano Luciano Navarro Juez de primera instancia y testigos instrumentales que al fin se nomenaran amas de los de me asistencia se presente el ciudadano Miguel Arciniega de esta vecindad y dixo: Que por el presente otorga dá y confiera todo su poder amplio complido y bastante cuanto por derecho se require y sea necesario mas pueda y valer deba al Sor. Mr. William G. Logan vecino de Nacogdoches especialmente para que en representacion y uso de los derechos y acciones que competin al otorgante solicita de la persona ó persona autouzado sal efecto la posecion y amparo del titulo de once sitios de tierra que se le concedio al referido otogante por el supremo Gobierno del estado de Coahuila & Texas por decreto de sinco de Abril de mil ochocientos treinte y uno pudiendolos colocar en

los baldios de Texas y facultando lo para poderlos vender en las terminos que mejor le conbenga á sa apoderado siendo por cuenta de este la obligacion de pagar y poblar el terreno dicho como estaba obligado con el supremo Gobierno el otorgante y ademas que el mensionado William G. Logan erogere por se cuenta los gastos para la espedicion del titulo ó titulos de posecion y en consequencia debe ser en un todo conforme al combinio que ha pecedido con el Sor. M. Benar en veinte y ano de Abril del presente año contrahida á que por cuenta del otorgante no debe expensanse gasto alguno, y se de su apoderado pues para todo lo dicho su anexso, conserviente, incidente y dependiente le confiero al referido William G. Logan el mas amplio y extenso poder sin limitacion y sen que agui no se expose deje de obra los efectos correspondientes va derijido el pesente poder pues cualquiara que sea la dá aqui por enserta como si islubiera escrita; y para que pueda nombrar su les titulas revocarlos y elegir otro de nubo con lebre franca y general administracion pues al presente y todas los demas los velera en cuanto el derecho le permite, y à estan y pasar por todo lo que se dicho apoderado hesure ó pacticare obliga su persona y bienes en toda forma y renuncia las leyes de su favor y defensa. In cuyo testimonio asi lo otorga y firme siendo testigos instrumentales los ciudadanos Domingo Bristello, Jose Casiano y Nicolas Flores todos de esta vecindad amos los de mi asistencia con quines acteio en la forma ordinario por falta de escribano publico en los terminos que el derecho previene de que doy fe. LUCIANO NAVARRO. MIGUEL ARCINIEGA. De assa., Ignacio Arocho. De assa., Manuel Perez.

Conuerda con su original la antecedente copia que mande sacar a pedimiento verbal del interesado hoy dia de su olorgamiento en y firme con los de mi asistencia de que doy fe.

LUCIANO NAVARRO.

De asis. De asis.
IGNACIO AROCHO. MAN'L PEREZ.

I do hereby certify that the foregoing power of attorney has been duly recorded in my office as correctly as could be done, in book of Spanish deeds and records, pages 19 and 20, this 20th Oct., 1838.

E. C. BEAZLEY,
C. Clerk.
By E. CATIR,
Dept.

The plaintiff then offered in evidence, and read to the jury, without objection, an agreed translation of said power of attorney, in the words and figures following, to wit:—

Seal Second Twelve Reals.
For the years [L. S.] of 1832 & 1833, 1834 & 1835.
FLOREZ.

In the city of Bexar, the first day of July, 1835, before me, the

citizen Luciano Navarro, judge of the first instance, and the instrumental witnesses which at the end are enumerated, beside those of my assistance, was present the citizen Miguel Arciniega, of this vicinity, and said: That he conceded, gave and confirmed all his power, ample, complete and sufficient, as much as the law shall require and as may be necessary, as much as can and ought to be, to William C. Logan, a resident of Nacogdoches, especially that, in representation and in use of the rights and action of constituent, he may here obtain from the person or persons authorized to that effect, the possession and protection of the title of eleven leagues of land, which is conceded to the constituent by the supreme government of the State of Coahuila and Texas, by a decree of the fifth of April, one thousand eight hundred and thirty-one, giving him power to locate them on vacant lands, and giving him power to sell them on the terms most convenient to his attorney, being on this account bound to pay for and cultivate the said lands, as the said constituent is bound to the supreme government, and besides the said William G. Logan, on his own account, is to pay the expenses for the despatch of the title or titles of possession, and conform in all things to the agreement preceding with the Senior M. Rinar, on the twenty-first of April of the present year, contracting for which, on account of the constituent, he can incur no expense, but only on account of the attorney. Thus far the whole which has been said, its connexions, incidents, relations and dependents, he confers upon the said William G. Logan the most ample and extensive power without limitation, and besides, by reason of a clause or requisite which is here not inserted this should fail to operate the consequent effects to which this power is directed, then whatever it may be, he gives it as for now inserted, as it was actually written, and for which he can appoint substitutes, revoke and appoint others anew, which a free, frank and general administrator, as far as the law permits, and that everything may be and pass, done by said attorney, he binds his person and goods in all form, and renounces the law in his favor and defence.

In testimony of which, thus he agreed and signed, being instrumental witnesses, the citizens Domingo Bristello, Jose Caseano, and Nicholas Florez, all of this vicinity, besides those of my assistance, with whom I act in the ordinary form, in absence of a notary public, in the form which the law provides, of which I give forth.

LUCIANO NAVARRO.
MIGUEL ARCINIEGA.

Ass.
IGNACIO AROCHO.

Ass.
MANUEL PEREZ.

The preceding copy agrees with the original, which on the day of its execution I commanded to be taken upon the verbal petition of the party interested. Of which I give forth.

LUCIANO NAVARRO.

Ass. IGNACIO AROCHA.

Ass. MANUEL PEREZ.

The plaintiff then offered to read to the jury as evidence of title a testimonio of the authentic notarial act of conveyance from William G. Logan, acting in his own name, and as attorney in fact for Miguel Arceniega to Andrew Hodge, Jun'r, executed on the 23d day of March, 1836, before William Christy, a Notary Public in the city of New Orleans, State of Louisiana, and certified by the said Christy, under his hand and seal of office, on the 9th day of May, 1849, to be truly copied from the record in his office, with the Governor's certificate thereto annexed; to the reading of which the defendant by counsel objected:

Because, 1. The said deed was not an authentic act at the date of its execution, and is not now, having been made before a foreign notary, and not before an officer of the Republic of Mexico, or of any State thereof, and the same cannot make proof as an authentic act.

2. The official character of the Notary before whom the said deed was executed, at the time of its execution, is not proved.

3. The original of said paper was not authorized or required by the law of Louisiana to be there executed or recorded, and is not legally or properly a record of any officer in said State of Louisiana, being extra territorial and extra official in said State, and without legal effect therein. And the transcript or copy thereof is not properly proved, not being within the purview of the act of Congress of March 27, 1804.

4. The execution of the original deed is not proved.

5. The non-production of the testimonio of said deed is not accounted for.

6. The power of attorney, dated Sept. 22, 1835, by authority of which said deed purports to be made, is not produced or accounted for.

7. By the said conveyance there is no sufficient description by which to pass the estate of eleven leagues of land referred to in the foregoing grant to Miguel Arciniega.

But the court overruled said objections, and thereupon said conveyance was read as evidence, in the words and figures following, to wit:—

(*Deed marked E.*)

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that this day before me, William Christy, a Notary Public in and for said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared William G. Logan, of Nacogdoches, Texas, herein acting in his own name, as well as in his capacity of agent and attorney in fact of Miguel Arceniega of San Antonio, Texas, who declared that for and in consideration of the sum of six thousand five hundred dollars, to him in hand paid, by Andrew Hodge, Jr., of this city, the receipt whereof

is hereby acknowledged, he does by these presents, for himself, his heirs and assigns, as well as for the said Miguel Arceniega, his heirs and assigns, grant, bargain, sell, and convey unto the said Hodge, present, accepting and purchasing for himself, his heirs and assigns, eleven leagues of land, situated on Red River and Sulphur Fork, in Texas, being the same granted to the said Arciniega, and conveyed to the said Logan under a power of attorney, on the 22d day of September, 1835.

To have and to hold the said lands unto the said purchaser, his heirs and assigns, to their proper use and behoof forever. It being well understood, however, that the said owners give no guarantee for the title of said lands, except against their own acts, nor are they to be liable for any claims or demands whatsoever which may be against them; but they hereby subrogate the said purchaser to all the rights and actions of warranty which they themselves have, or may have against their grantors, fully authorizing said purchaser to exercise the said rights and actions in the same manner as they themselves might or could have done.

Thus done and passed in my office at the city of New Orleans aforesaid, in the presence of W. G. Latham and W. C. Reynolds, witnesses of lawful age and domiciliated in this city, who hereunto subscribe their names, together with the said appearers, and me, the said Notary, on this twenty-third day of March, in the year of our Lord one thousand eight hundred and thirty-six.

Original signed:

WM. G. LOGAN,
WM. C. REYNOLDS,
A. HODGE, JR.,
W. G. LATHAM.
WM. CHRISTY,
Not. Pub.

STATE OF LOUISIANA,
City of New Orleans:

I, William Christy, a Notary Public in and for the city and State aforesaid, do hereby certify that the foregoing pages (one and a portion) contain a true copy of the orginal authentic act of conveyance from William G. Logan for himself, and as agent of Miguel Arciniega, to Andrew Hodge, Jr., for lands in Texas, of the date of the twenty-third of March, in the year of our Lord one thousand eight hundred and thirty-six, and of record in my office.

In testimony whereof I hereto subscribe my name, and cause my seal of office to be hereto affixed at New Orleans, this 9th day of May, 1849.

[L. S.]

WM. CHRISTY,
Not. Pub.

These are to certify that William Christy, whose name and seal of office are affixed to the annexed certificate, is now, and was at the time of affixing the same, a Notary Public in and for the city of New Orleans, State aforesaid, duly commissioned and sworn according to law, and that his certificate and attestation aforesaid are in due form of law, and by the proper officer.

Given under my hand, and the seal of the State, this 16th day of May, one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-third.

[L. S.] ISAAC JOHNSON.

CHARLES GAYARRE,
Secretary of State.

The plaintiff then offered to read as evidence to the jury, a testimonio of the Notarial authentic act of conveyance, from Andrew Hodge, Junior, to William Christy, the plaintiff, executed on the 6th day of August, 1836, before Hillary Breton Cenas, a notary public in the City of New Orleans and State of Louisiana, and certified by said Cenas, under his hand and seal of office, on the 14th day of May, 1839, to be truly copied from the record in his office, with the Governor's certificate thereto annexed, to which the defendant by counsel, objected, upon like grounds with the objections to the last before described paper, but the court overruled said objections, and the said paper was read to the jury, in the words and figures following, to wit:—

(*Deed marked F.*)

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that this day before me, Hilary B. Cenas, a notary public in and for the said City and Parish of New Orleans, duly commissioned and qualified, personally came and appeared Andrew Hodge, Junior, of this city, unmarried, who declared that for the consideration hereinafter expressed, he does by these presents grant, bargain, sell and convey unto William Christy, also of this city, present and accepting and purchasing for himself, his heirs and assigns, all the right, title, interest and claim which he, the said Hodge, has in and to certain tracts or parcels of land, situate in the Republic of Texas, and of the description following, to wit:—

First. Eleven leagues situate on Red River, and on the Sulphur Fork of Red River, being the same granted by Miguel Arciniega, and purchased from him by William G. Logan, on the 22d September, 1835, and conveyed to the said Hodge by the said Logan, by an act passed before the said Christy, notary, on the 23d day of March last. Say leagues 11

Second. His undivided half part of three other leagues, held by and owned in common by him and Nathaniel A. Ware, who lately sold his interest to William L. Hodge and Thomas Oxnard, Junr. One situated on the waters of the Nachez River, about 35 or 40 miles southwest of Nacogdoches, granted to Macedonio Carneona, and purchased by the said Logan on the 10th October, 1835. One situate on White Rock Creek of Trinity River, 60 miles west by south from Nacogdoches, granted to Francisco Martinez, and purchased by the said Logan on the 5th September, 1835; and one situated on the Nachez River, about 30 or 35 miles southwest from Nacogdoches, and near the land granted to the said Macedonio Carneona, which was granted to Rafael Bercero, and purchased by the said Logan on the 25th September, 1835, which said undivided half part of said three leagues was purchased by the said Hodge from the said Logan, by an act pased before the said Christy, notary, on the said 23d day of March last. Say leagues 1½

Third. The one undivided half part of six leagues situate in Mariana and Manuel Lopez' grant of 22 leagues, the titles to which consist in sundry documents to be referred to in a statement hereinafter to be made, by the said Hodge and the said Christy, and designated by the letters A, B, C. Say 3

Fourth. The one undivided half part of two leagues, situate northwest of Soda Lake, four miles from the Sulphur Fork in Jesus Canton's grant of eleven leagues: title to be referred to in the statement named in the above paragraph, and marked D, E, F. Say leagues 1

Fifth. The one undivided half part of two leagues, one adjoining the town of Jonesborough on Red River, in the grant to Marcelline Sales; and one situated on the bank of Red River, below the little River, and adjoining a survey of Allen's, in a grant to Jose Antonio Sepulvida: titles to be referred to in statement named in the above third paragraph and marked G, H. Say leagues 1

Sixth. The one undivided half of eleven leagues, consisting of tracts of one league each, situate partly on the Nachez River, about 30 or 40 miles from Nacogdoches, and partly on White Rock Creek, granted to the following named persons, to wit: Maria J. Tores, Conception Santa Cruz, Maria S. Cortes, Julio Savais, Francisco Paires, Manuel Juscun, Eleterio Lopez, Anestacia Barella, Miguel Tores, Maria B. Cruz, and Juan Cannon, each one league, the title to be referred to in statements named in the above third paragraph, marked I, K. Say leagues 5½

Amounting in all to twenty-three leagues, or one hundred and one thousand eight hundred and forty-four acres. Leagues 23

Acres 101,844

To have and to hold the said lands to the said purchaser, his heirs and assigns, to their own proper use and behoof forever.

This sale is made for and in consideration of the sum of fifty cents per acre, in payment for which the said Christy has given his six several promissory notes, for the sum of eight thousand four hundred and eighty-seven dollars, each, drawn to the order of, and endorsed by me, notary aforesaid, all dated this day, and made payable two in two years, two in three years, and two in four years after date, with interest thereon at the rate of eight per cent. per annum, payable at the end of each and every year.

It is well understood and agreed by and between the said parties, that the said Hodge give no guarantee or warranty title to any of said lands, but that in case he should fail in procuring the necessary titles from the heirs of the said Logan for such of the said lands as are described under the third, fourth, fifth, and sixth heads of this act then and in that case, he shall deduct from the notes of said Christy, which he has given in payment for the said lands as they shall respectively fall due, the amount of the said lands as described in the said third, fourth, fifth and sixth heads, at the said rate of fifty cents per acre.

Thus done and passed in my office at the said City of New Orleans, in the presence of Joseph J. Wickes and Robert Taylor, witnesses of lawful age, and domiciliated in this city, and who hereunto sign their names with the said parties and me, said notary, on the sixth day of August, in the year one thousand eight hundred and thirty-six.

(Original signed) A. HODGE, JR.
WM. CHRISTY,
J. J. WICKES,
A. TAYLOR.

H. B. CENAS,
Not. Pub.

STATE OF LOUISIANA,
City of New Orleans:

I, Hilary Breton Cenas, a Notary Public in and for the City and State aforesaid, do hereby certify that the foregoing three pages and six lines contain a true copy of the original authentic act of conveyance from Andrew Hodge, Jun'r to William Christy, for lands in Texas, of the date of the 6th August, A. D. 1836, and of record in my office.

In testimony whereof I hereunto subscribe my name, and cause my seal of office to be hereunto affixed, at New Orleans, this fourteenth day of May, A. D. 1849.

[L. S.] H. B. CENAS,
Not. Pub.

UNITED STATES OF AMERICA,
State of [L. S.] *Louisiana:*

By Isaac Johnson, Governor of the State of Louisiana :—
These are to certify that Hilary Breton Cenas, whose name and

seal of office are affixed to the annexed certificate, is now, and was at the time of affixing the same, a notary public in and for the City of New Orleans, State aforesaid, duly commissioned and sworn according to law, and that his certificate and attestation aforesaid are in due form of law and by the proper officer.

Given at New Orleans, under my hand and the seal of the State, this 16th day of May, one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-third.

By the Governor.

[L. S.] ISAAC JOHNSON.

CHARLES GAYARRE, *Secretary of State.*

The plaintiff then offered in evidence, and read without objection as evidence to the jury, the *the* plats, certificates, field notes, index and memorandums contained in and connected with the report made by David Hill, Surveyor of Harrison County, dated August 1st, 1850, in the words and figures following, to wit :—

UNITED STATES OF AMERICA,
District of Texas, Harrison County:

WILLIAM CHRISTY
versus
JAMES FINLEY. } August the first, A. D. 1850.

Pursuant to an order of your honorable court, dated the fifth day of July, one thousand eight hundred and fifty, notice being given to the attorneys of the parties, and the twenty days being waived, as shown upon the back of the order, the first day of August being set to commence the work, and then, on that day, I proceeded to the ground in company with James Finley, defendant, and Archibald Hughes as agent of the plaintiff, who pointed out and directed the survey, which was examined and surveyed as follows :—

Having no knowledge of the beginning corner, I proceeded to the place which I supposed to be the northwest corner of the three-league survey. I then proceeded south with the line which I found marked to where I supposed the southwest corner of the same was. I then ran east, but could —— find anything resembling a corner, but found a line which I supposed to be the east boundary of the three-league survey ; I then proceeded to a thorough investigation, which is shown in the following field notes :—

Field Notes of the Three-League Block.

Being on an old line as above stated, I proceeded north, following the same, the issue of which is as follows :—

From this point running north with the said line, at nine hundred and thirty-five varas, a branch running southwest, at forty-five hundred and forty-eight varas, a small branch flows west, at fifty-two

hundred and twenty varas I found a corner represented as follows: A hickory about fifteen inches in diameter, of which I took the bearing north, seventy degrees west, at the distance of eleven varas. I set my compass, from which point a post-oak, about fifteen inches in diameter, bears south fourteen degrees east, four and four-tenth varas off, both of which were marked with a cross with some other hacks on the same, which seems to have been made with an axe. There was no stake or mound found at this place. I then proceeded west, with the same variation as the other line run, which was to the regulation, as nearly as I was capable of ascertaining, to the variation of ten degrees and twenty-five minutes west, north latitude, but found no line marked. At the distance of fourteen hundred varas, a small branch running northwest, nineteen hundred varas, a branch five varas wide flows northeast; at nineteen hundred and eighty varas, a branch three varas wide flows northeast by east. Ten thousand six hundred and twenty varas, a branch three varas wide flows south; at twelve thousand nine hundred and forty varas, a branch flows south; at fifteen thousand varas I find no corner nor mark of time, but running on, at fifteen thousand and seventy varas, a small branch flows southeast by east, crossing the same several times, and at fifteen thousand seven hundred and ninety varas, I find an old line on which to my left hand on same at the distance of thirty varas, I find what I suppose to be a corner, which is as follows: A black-jack which had been cut down on the opening of a road, on the trunk of which I find some scars, though it being much decayed, I could not identify as to how they were made; the same black-jack being full fifteen inches in diameter, and giving it the bearing of north four degrees east, at the distance of five and two-tenth varas it gave me a point directly on the line as near as I was able to ascertain. There was also another black-jack standing west of the line, bore from this point just ascertained, south sixty-five degrees west, about one and eight-tenth varas, which had marks and scars on it, which I have no doubt was made by an axe. I then ran south with said old line, which runs to the bearing or variation heretofore given, and at the distance of eighty varas, a small branch running eastwardly; at twelve hundred and twenty varas, the same branch running southeast; at thirty-five hundred and ten varas, a branch two varas wide flows southeast; at five thousand varas I find no corner or line running at right angles with this line; but on, at fifty-two hundred and twenty varas, I find the appearance of a small mound, on which I found a piece of a stake five or six inches long, which was entirely buried in the mound, from which a black-jack about twelve inches in diameter bears north twenty-eight degrees west, at the distance of three and two-fifth varas, and another black-jack *which* one trunk of a double tree, which is about fourteen inches in diameter, and bears south seventy-eight degrees east, five and two-fifth varas distance, both marked with a cross, and other chops with an axe; the first one mentioned has been belted for the purpose of clearing the land, and has since fallen down.

I then ran east, but could find no marked line; and at the distance of seventeen hundred and fifty varas from this corner, a branch two varas wide flows south; at twenty-two hundred and sixty varas, a branch five varas wide flows southwest; at six thousand eight hundred and fifty varas, a small branch flows northwest; at seven thousand two hundred and seventy varas, a small branch flows northwest; at fourteen thousand six hundred and twenty varas, a small branch running eastwardly; crossing the same several times, at fifteen thousand varas, I examined, but could (——) neither corner or line, but running on, at fifteen thousand seven hundred and ninety varas, or thereabouts, we come to the place I began at, and a re-examination took place. Still no corner to be found. See Plat No. one.

I then proceeded to make the third survey mentioned in the petition, having no knowledge of the beginning corner; but by examining the field notes in the petition, I find that the description given of the northeast corner of the three-league block or survey number one; I therefore proceeded to that point, as I supposed it to be the said corner, and from thence ran east or at right angles with the old line as spoken of in the field notes, but could find no marked line: at three hundred and sixty varas a branch running eastwardly at five thousand varas, examined carefully but could find neither corner or line; running on at fifty-two hundred and sixty varas, I find an old marked line, which I take to be the east boundary called for in the field notes, on which I examined each way for a half mile, but could find no corner; I then returned to the point running south with said line, crossed a branch two varas wide flowing east; at about one hundred and fifty varas intersected a field of some considerable width, at three thousand three hundred varas, a branch two varas wide flowing east; at five thousand varas I examined for corner for a considerable distance to and fro on the line, but could find no corner: I then turned west, but could find no marked line resembling the work: at forty-one hundred and ninety varas, a branch two varas wide flows southeast: at five thousand varas examined for a corner, but could find nothing resembling one; running on at fifty-two hundred and sixty varas, finding the same old line spoken of in the outset, but still unable to find the corner: I did not traverse the old line north, as I had done so in the three-league survey, which satisfied me I could find no corner on it: for further explanation I will reverse the field notes so as to make the courses run as given in the original.

Commencing five thousand varas south of where I should have found the northeast corner of this survey on the old line as before represented, the supposed east boundary of this league, but at no corner: I then run north with this line at nineteen hundred and seventy varas, a branch two varas wide flows east, at forty-nine hundred varas a small branch runs east; at five thousand varas a diligent examination was made but no corner to be found: I then turned west at nineteen hundred varas, leaving a small branch after

crossing it many times, and at five thousand varas no corner could be found, but at fifty-two hundred and sixty varas, I found a corner as follows, which was on an old line from a point on said line which I ascertained, I found a hickory about fifteen inches in diameter bears south seventy degrees west, eleven varas off, and a post-oak about fifteen inches in diameter, bears south fourteen degrees east, four and one-fifth varas distant, both marked with a cross and other chops with an axe; no mound or stake found: thence south with said old line at five hundred and sixty-two varas a branch running west, at thirty-four hundred and eighty-five varas a branch running southwest; at five thousand varas, there was a diligent search made for a corner, but none found: thence turning east, but no marked line could be found; running on at the distance of a thousand and seventy varas, a branch two varas [—] flows southeast; at five thousand varas no at fifty-two hundred and sixty varas, the place of beginning on the line, the place which was first specified: The course of the line just last mentioned is south in the field notes furnished me, which I take to be a clerical error, which if it was not and running south the same distance I ran east, the survey would not close by seven thousand four hundred and thirty-nine varas, and *and* the course with that distance would be north forty-five degrees east, but that course no doubt is an error and should have been east.

The second survey represented in the petition. In this case I could find no clue to any known corner or any evidence of corner by which I could commence any operation on the survey that would be definite. After comparing the field notes of the survey with the field notes of the survey number three, last made, I find that the southeast and southwest corner of survey number three give the same witness trees as the corners of this survey number two: therefore, I came to the conclusion that it must lay right south of number three: I commenced at the point where I should have supposed the southwest corner of number three should have been, which was on an old line as heretofore represented in field notes of number three: I then ran south with said old line at two hundred and thirty varas, a branch two varas wide runs eastwardly at six hundred and eighty-five varas; a branch three varas wide flows eastward at nineteen hundred and eighty varas, a small branch runs eastward at five thousand varas, examined for a corner but could find none; this measurement carried me into Benjamin Long's field, where the timber is much decayed and fallen down: I then ran east, could find no line marked, and at four hundred and eighty varas a branch three varas wide flows northeast at twenty-five hundred and seventy varas, a branch three varas wide flows north at thirty-six hundred and fifty varas, a branch two varas wide flowing northwest; at forty-four hundred and eighty varas, a small branch flows north; at forty-seven hundred and seventy varas, a branch flows north; at five thousand varas I examined strictly for a corner but none to be found, but on at fifty-two hundred and sixty varas, I find an old line which I take to be

the last boundary of said survey on which I examined each way, north and south, on the line for some considerable distance, but still could find no corner: I then turned north from this point, running with said old line at thirty-one hundred and sixty varas, a branch three varas wide flows east; at four thousand and fifty-five varas, a branch six varas wide flows northeast; at forty-one hundred and twenty-six varas, a small branch flows southeast; at five thousand varas intersected the ground which I had formerly examined, and having made search on the line all the way without any success in finding a corner, I declined any further examination or investigation, as the next line proposed had already been examined by me. See map hereto attached.

DAVID HILL,
District Surveyor, or County Surveyor H. D. or C.

The line that I find of the survey runs to a regulation of the compass of ten degrees 25 minutes instead of 9° 20 minutes.

DAVID HILL,
D. H. D. S. H. D.

There was no application or consent for any surveying on part of defendants in this case.

DAVID HILL,
Dist. Survey H. D.

(For map see original, p. 82.)

The above map represents the survey claimed by William Christy under the grant of Arciniega, as it actually stands on the ground, according to the best knowledge I could obtain from the field notes and examination. Given under my hand this the 15th day of August, A. D. 1850.

DAVID HILL,
District Surveyor D. H. or Co.

(For map see original, p. 83.)

The above plot represents the examination made by me for William Christy, under the claim of Arceniega. The ruled lines represent lines actually marked, the dotted lines represent the travel I made where I could find no marked lines. The south boundary line of the three-league block is not laid down exactly as I ran it at this time; the east end of it is something further south on the plot than I ran, owing to the fact that I had not at that time ascertained the true bearing of the old lines, and did not run it exactly to the right angle of those lines. Being satisfied that there was no marked line, I thought it necessary to run it over again.

Given under my hand this 15th day of August, A. D. 1850.

DAVID HILL,
District Surveyor H. D. or Co.

N. B. See field notes.

(For map see original, p. 84.)

Index to

Names of parties.	Amount of conflicts.	Original grant.	Date.
Henry D. Bullard	640 acres	L. P. Alford	14 Dec. 1841
James Cellum	1840 "	James Cellum	24 May, 1838
James M. Gill	400 "	"	24 " "
Eli A. Jeter	640 "	E. S. Bate	10 Mar. 1842
John Graves	2765 "	Francis Valmore	6 Oct. 1838
"	1110 "	Sarah Shots	22 Feb. "
"	3,663,000 sqr. vrs.	Jediah Payne	15 Oct. "
"	6,816,000 "	James Adams, John Gray, adm'r	3 " "
Hiram Henley	Small conflict	Amy Dunman	4 " "
Napoleon Jones	640 acres	W. W. Pridgen	19 Dec. 1843
"	239 47/100 "	His own head-right	9 Oct. 1847
"	376 79/100 "	Joel L. Hellems	14 Dec. 1841
Dickinson C. Moore		Francis Valmore	
R. S. Pridgen	640 acres	Holland Anderson	5 Mar. 1838
Warren Parker		Francis Valmore	
William T. Scott	200 "	John Peoples	19 April, 1841
"	320 "	Own head right	4 Nov. 1845
"	100 "	Amy Dunman	4 Oct. 1838
"	320 "	"	4 " "
"	3,663,000 sqr. vrs.	Jediah Payne	15 " "
James Scott		James Adams	30 " "
Francis M. Scott		"	30 " "
Angus Thompson	500 acres	James Cellum	24 May, "
Alfred B. Wright	383 "	Holland Anderson	5 Mar. "
William Young	598 "	"	5 " "
A. Aikin	653 "	"	5 " "
James Finley	320 "	Josiah Barentine	20 April, 1842
B. B. B. Hunter		Holland Anderson	5 Mar. 1838
Benjamin Long	150 "	C. W. Anderson	8 May, 1849
James M. Carty			
James D. Scott		Bethany Rodgers	1835
John T. Spencer, transferred to Bell		Pre-emption file	12 May, 1849
William Mallory		F. L. Smith	
John S. Wilson	320 "	Wm. L. Wilson	26 Aug. 1848

the Map.

Color of claim.	References to map.	Remarks.
Henry D. Bullard, assignee of S. P. Alford	123	Claimed by limitation.
His own head-right	136	"
James Cellum's head-right	D & J M G, dotted space in W W C 136	"
Eli A. Jeter, assignee of E. S. Bate	F & E S B	"
John Graves, assignee of Smith, assignee of Francis Valmore	135, 138	"
John Graves, assignee of Smith, assignee of Sarah Shots	139	"
John Graves, assignee of G. B. Adkins, assignee of Jediah Payne	90	"
John Graves, assignee of John Gray, adm'r of James Adams	137	"
Hiram Henly, ass. of Parckmen, ass. of Hooper, ass. of Dunman	D F & H H on 88	"
Napoleon Jones, ass. of W. W. Pridgen	122	"
His own head-right	69	"
Napoleon Jones, ass. of Joel L. Hellems	94	"
Claims under John Graves, ass. of Francis Valmore	C D	"
R. S. Pridgen, ass. of Holland Anderson	R S P	"
Claims under John Graves, ass. of Francis Valmore	½ mile east of C D	"
Assignee of John Peoples	89 V	"
Own head right	S F	"
Assignee of Amy Dunman	W T S	"
" "	"	"
Claims under John Graves	90	"
" "	137 & J S	Not claimed under limitation.
" "	137 & F M S	Claimed by limitation.
" James Cellum	D A T	"
" Holland Anderson	D A B W	"
" "	D W Y	"
" "	D A A	"
J. Finley, assignee of Josiah Barentine	112	"
Benjamin Long, ass. of C. W. Jackson	F B L.	
James D. Scott, assignee of Bethany Rodgers	[House] J Mc	
Pre-emption	[House] J D S	
F. L. Smith	[House] B	
John S. Wilson, assignee of Wm. L. Wilson	[House] M	
	[House] J W	

The blue (lead) marks represent the boundaries of Arceniega's survey, William Christy, assignee. The open lines, or lines not marked, are dotted with blue ink (lead). The black lines represent surveys under the Government of Texas. The lines dotted with black ink are purchases from the original surveys under the Government of Texas, which are—see the margin of the map. The lines dotted with red ink represent surveys made in 1835, with the names wrote thereon in red ink, which was surveyed by the variation of 20° to 70° from the true meridian.

The map to which this is an index is not perfect, but as near as can be made from a knowledge that can be ascertained by record. An actual survey on the ground would make some change in the map.

DAVID HILL,
D. S. H. D. or C.

The plaintiff then offered as evidence, and read to the jury without objection, an agreement of the date of the 12th day of December, A. D. 1853, signed by W. P. Ballinger, attorney for defendant, and Robert Hughes, attorney for plaintiff, in the words and figures following, to wit:—

(*Agreement.*)

It is agreed between William P. Ballinger, one of the attorneys and counsel for the defendants in the actions at law depending in the District Court of the United States at Galveston, wherein William Christy is plaintiff, and James Finley and others are defendants, with the approbation of the other attorneys and counsel for defendants, and Robert Hughes as attorney and counsel for the plaintiffs, as follows:—

The following of said cases shall be selected for trial, to wit: William Christy against James Finley, No. 173 on the docket; William Christy against James Cellum, No. 171 on the docket; William Christy against John Graves, No. 176 on the docket, and William Christy against Wiley W. Pridgen, No. 186 on the docket: so that the principles involved in the contest in all the cases may be settled and determined with as little and expense as practicable; but should not all of said principles be determined in those cases so as to end the litigation as to all of said cases, such other of said cases, one or more, shall be tried until and up to a complete settlement of said principles; and then judgments shall be rendered in all the cases in conformity to the judgments in the cases tried and determined; and should the party unsuccessful be dissatisfied with the result, and wish to take a writ of error to the Supreme Court of the United States, the same may be done in the cases tried, and upon the determination in said cases in said Supreme Court, the judgments of the s'd Supreme Court shall determine all the cases; but only after such determination is judgment to be entered in the cases not tried.

It is to be understood, however, in order that it may be known

what principles are involved in each particular case, particularly as to the statute of limitations, or any other defence, when the question may be varied by the nature or extent of the proof, the evidence, whether in documents, parol testimony, or otherwise, shall be filed in the proper record before the day for trial hereinafter designated, if practicable; if not, by the time the cases may be returned from the Supreme Court, or when otherwise necessary.

On the trial, the following shall be admitted facts: that the land in controversy, or that embraced within the boundary of the grant under which the plaintiff claims, was, at the date of said grant, and remained within the twenty frontier leagues bordering on the United States line of the north; and the plaintiff will offer no evidence on the trial other than the grant under which he claims, conducing to show the assent or approbation of the national executive of the Republic of Mexico to the making of said grant.

That the conditions subsequent, contained in or annexed to the grant under which plaintiff claims, except that of the payment of the purchase-money, have not been performed, but said defendants do not admit that said purchase-money has been paid. That the plaintiff, William Christy, never has been at any time, a citizen of, or permanent resident in Texas, or any other portion of the Republic of Mexico, but always was, and continued to be an alien to said Republic, and to Coahuila and Texas, and to the Republic of Texas, up to the time of its annexation, a citizen of and resident in the United States: and the same will be admitted in regard to Andrew Hodge, Jr., provided upon diligent inquiry, made in good faith, the attorney for the plaintiff shall find the facts to be true; and should said attorney decline to make such admission, he will communicate the same to the attorneys for defendants in due time, so that they may take proof on the subject as they may think proper.

The grant under which plaintiff claims, was never sued on by plaintiff or any one else, for the of ascertaining its validity, as provided by acts of the Congress of the Republic of Texas, approved January 9th, 1841, entitled "An act to quiet titles within the twenty frontier leagues bordering on the United States of the North."

The grant under which plaintiff claims was executed by Radford Berry, who was at the time was alcalde of Nacogdoches.

The letter of attorney under which William G. Logan purports to have conveyed to Andrew Hodge, Jr., the land claimed, was executed by Miguel Arciniega in the manner the same purports to be executed, in the copy of the public act which has been submitted to counsel.

The statement of Col. Mills, filed in one of the cases commenced, as to an entry by him as agent of plaintiff on the land in dispute, before action commenced, shall and may be read as evidence.

It is further agreed that all legal defences may be made under the plea of not guilty, without any objection upon any ground.

The parties being anxious for a trial, will proceed to complete their proof, in conformity to the provisions of the judicial act of

Congress of 1789, in its thirtieth section, and now designate the 15th day of February next as the day in the next term of the court at Galveston, at which to commence the trials in the cases designated; and in taking proof, it is understood that whatever is needed may be taken in the case against James Finley before mentioned, and when necessary may be used in all the others.

This agreement is without prejudice to another agreement of counsel heretofore made in these cases, and without prejudice to any application made upon sufficient grounds, for a continuance in said cases.

This agreement shall in substance be made an order of the said District Court.

Witness our hands and seals, this 12th day of December, A. D. 1853.

W. P. BALLINGER. [SEAL.]
ROB. HUGHES. [SEAL.]

The plaintiff then offered in evidence, and read to the jury without objection, the deposition of C. C. Mills, taken before T. A. Portillo, "chief justice," on the 30th December, A. D. 1850, in the words and figures following, to wit:—

(*Deposition.*)

The witness, Charles C. Mills, says that in the month of November or December, 1848, William Christy, of New Orleans, came to Harrison County, Texas, and requested of deponent (who resides in said county) that he would call on each and every person who might be found on a survey or grant of land containing five leagues, which the said William Christy, and held, as he affirmed, an unquestionable (——) to; and to assert said claim in his own name. And I was also requested by said Christy to inform each and every person so found on the land claimed by him, that he would meet them on a given day, in the town of Marshal, and compromise the matter with them by selling them the land which each of them were in possession of, at a reasonable price and accommodating terms; and as many of them had made considerable improvements on the land, I was instructed to inform them that the land would be estimated as wild land, and nothing charged for their improvements; and that the said Christy would exhibit his title for the inspection of all concerned, either in person or by their attorneys; and that in the event of his not being able to settle the matter with them amicably, he would be under the necessity of bringing an action against each and every person who might refuse or fail to compromise with him for the recovery of all the land within his claim. In going over the lands claimed as above stated by the said Wm. Christy, I found the following persons in possession of, and claiming different portions of the same, viz: Peter Adams, Henry D. Bullard, James Cellum,

James Finley, James M. Gill, Eli A. Geter, John Graves, Hiram Henley, Benj. B. B. Hunter, Napoleon Jones, Benjamin Long, Sam'l R. Lipscomb, Dickerson C. Moore, James M. Carty, Jesse Parchman, Wiley W. Pridgeon, Reding S. Pridgeon, Warrior Parker, Wm. M. Price, Wm. P. Rose, Wm. T. Scott, James D. Scott, James Scott, Francis Scott, Harry Strickland, John T. Spencer, M. Stitch, Angus Thompson, Richard Watson, John Wilson, Alpheus B. Wright, Wm. Young, and several others, who compromised with the said Christy, by paying him for the land they were in possession of. To the best of my recollection I saw all of the above-named persons, and mostly at their own houses, and acted in the premises as above stated, by delivering the said William Christy's message and proposition, with the following exceptions, viz: James Finley, Henry D. Bullard, and Eli A. Geter, neither of whom I found at their houses, or afterwards conferred with them on the matter. To Mrs. James Finley at her own house I made the statement in substance that I made to all the other persons above named, with the request that Mr. Finley would meet Col. Christy in Marshal, as before stated. I also saw the overseers of the said Bullard and Geter, and gave them the necessary notice, with the request that each of their employers would meet the said Christy in Marshal on the day named.

CHAS. C. MILLS.

THE STATE OF TEXAS,
Harrison County:

Be it remembered, that on the thirteenth day of December, A. D. eighteen hundred and fifty, before me, Trenton A. Patillo, Chief Justice in and for the County of Harrison, in the State of Texas, personally came Charles C. Mills, a citizen of said county of Harrison, a witness in a cause pending in the United States District Court for the District of Texas, at Galveston, in which William Christy is plaintiff, and James D. Finley is defendant, who, after being duly sworn, deposes and says, that the matters and things stated in the foregoing and accompanying writing are true, to the best of his knowledge, remembrance and belief. William P. Hill and J. Pinckney Henderson, attorneys for said defendant, being present, waive objections to the manner of taking and certifying the same.

Sworn to and subscribed before me on the day and date first written in this certificate.

In testimony of which I have hereunto set the seal of the County Court of said county. Given under my hand at office in Marshal, in said county, this 30th December, A. D. 1850.

[SEAL.] T. A. PATILLO,
Chief Justice.

The plaintiff also gave in evidence, without objection, Cordova's

Map of the State of Texas, to show the situation of the country in which the land is.

The defendant then, to maintain the issue on his part, proceeded with his evidence: when it was proved by the admission of the parties by their attorneys, that L. P. Alford and the defendant, by an union of their several possessions, had, next before the commencement of plaintiff's action, peaceable, adverse, and uninterrupted possession for more than three years, claiming under color of title, six hundred and forty acres of land, by virtue of said Alford's duly recommended head-right certificate, duly surveyed and returned to the General Land Office, and within the boundary of both of the one-league surveys of plaintiff, described and mentioned in the second and third count of his petition, as claimed to be situated by plaintiff, and conflicting with said one-league surveys, as represented on the plats returned by David Hill, the surveyor. And it was furadmitted by the plaintiff that the grant to Miguel Arciniega was made by the issuance of the title of possession mentioned in this bill of exception, without the approbation or consent of the Executive of the Supreme Government of Mexico. And it was further agreed that William G. Logan was a native citizen of the United States of the North: that he removed from Mississippi to Texas, (——) 1831: that he was a colonist, and received a grant in Vehlin's Colony, on the 30th April, 1835.

The defendant then offered as evidence and read to the jury the deposition of David Hill, taken by and before T. A. Patillo, U. S Commissioner, 7th February, 1854, and the plats and certificates and field notes referred to in said deposition, in the words and figures following, to wit:—

David Hill, a witness, being by me first duly examined, cautioned and sworn to testify the whole truth, did thereupon depose and say as follows:—

By order of the Federal Court at Galveston, on the first day of August, 1850, in company with Archibald Hughes, the agent of said plaintiff, and James Finley, one of the defendants, I proceeded to examine for the lines and corners of the land claimed by William Christy in his petition; the annexed field notes, pages from one to six, which were intended to be, and I presume are, correct copies of the original field notes and observations thereon, which were returned by me to said court, contain a true statement of what I did and saw in making said examination. Said copy of field notes are marked with the letter (A), and are made a part of my answer. I herewith make a part of my answer a plat marked with the letter (B), for the purpose of showing lines, corners and streams, as I found them on the ground. There is nothing in the calls for the beginning corner of the field notes of the survey first described in petition of plaintiff to inform me, as surveyor, of the location of said corner. Some years ago I found in the hands of private persons private maps of old sur-

veys in Harrison County, from which, and such signs as I had before discovered in the woods, I was induced to examine the ground before mentioned. But for those maps, if I had been left to the statements in the said petition, I should have gone to Cado Parish, in Louisiana, to look for said land. In the plat (B), figure 1, in red ink, represents what I suppose to be the beginning corner intended to be described in plaintiff's petition, but at which place, nor in the vicinity, I could not find anything resembling the corner. At this point I found a line, marked on map or plat (B) with red ink, and as number 2 running north and south. I followed said line as represented on said copy of field notes to the point marked 2 in red ink. I stopped at said point, because there I found some bearing trees, as stated in said copy of field notes, but said line continued on north. The distance between figures 1 and 2 is five thousand two hundred and twenty varas; I then turned west, because the second course in plaintiff's petition called for that direction. In running fifteen thousand varas in that direction, I found no marked line nor corner at that distance (this point being marked on plat (B) with a dot), but at seven hundred and ninety varas further west, intersected an old line running north and south; thirty varas south of this point of intersection with said line, I found what I supposed might be a corner, as stated in the said copy of field notes. Said old line I have traced about two leagues further north. The said supposed corner is marked figure 3, in red ink, on said plat. I took the south end of said line, because it was the course called for in plaintiff's petition. I then ran south with said old line five thousand varas, and found no corner. At two hundred and fifty varas further on, found the appearance of a mound, trees, &c., as found in said copy of field notes, marked on said plat (B), figure 4, red ink. I then turned east, because it was the fourth course called for by plaintiff's petition, and proceeded fifteen thousand seven hundred and ninety varas, without finding any appearance of a marked line, as stated in said copy of field notes. The letter (A), in red ink, represents the land in this survey which has no line running east and west. The lines running north and south are parts of continuous longer lines, as represented in plat (B) by red lines, numbers 1 and 2.

I then proceeded to examine for the lines and corners of the third survey described in plaintiff's petition, which survey on plat (B) is marked B, in red ink. As shown by my copy of field notes aforesaid, I found no beginning corner and no other corner, except that the northwest corner, as described in plaintiff's petition, corresponds with the description in said petition, of the northeast corner of the first survey, marked (A) on plat B. The red lines on plat B running north and south, and distinguished as No. 2 and No. 3 in said plat, are the old lines spoken of in the said copy of field notes as the supposed east and west boundaries of the said survey last described in plaintiff's petition, and continuous lines running north and south

and extending beyond the distances and calls in said plaintiff's petition.

I then proceeded to examine for the corner and lines of the second survey mentioned in plaintiff's petition, which is marked in said plat B with the letter C, in red ink; I found no corners, no lines running east and west. The two old lines represented in said plat B by No. 2 and No. 3, continue south, as represented in said plat B. I followed one of them half a mile, the other three-fourths of a mile south farther than the distance of five thousand varas, at which the plaintiff's petition calls for the southeast and southwest corners of said survey, and found no end to them. By comparing the field notes in the copy of field notes aforesaid with the field notes described in the plaintiff's petition, it will be seen that the course of the watercourses and the distances to them differ in the former from the latter. The three red lines on plat B, running north and south, are the only lines or marks that I was able to find in that vicinity which I could in any way apply the description of the land contained in plaintiff's petition. The timber in that section of the country is generally oak, hickory and black-jack, and tolerably uniform in size. The surveys in said plat B are the surveys under the head-right certificate of James Cellum for one league, the head-right certificate of Holland Anderson for a league, the head-right certificate of Tinsley Lee for one-third of a league, and the head-right certificate of Josiah Barrentine for three hundred and twenty acres of land, as respectively marked in said plat, and John Graves' head-right certificate for twelve hundred and eighty acres on said plat.

I was surveyor of Harrison County, Texas, and the district it comprises, from 1838 to 1850, inclusive, except the year 1841. I never had in my office any evidence of the plaintiff's claim till the spring of 1849, when said plaintiff presented it himself. All the previous information I had of said survey was from private and unofficial plats or maps. There was a report that there were "eleven league claims," but of the plaintiff's claim particularly I had no knowledge till in 1849, as aforesaid.

DAVID HILL.

Subscribed before me this 7th day of February, 1854.

F. A. PATILLO,
U. S. Commissioner.

Copy of Field Notes, letter A, in D. Hill's deposition.

UNITED STATES OF AMERICA,
District of Texas, Harrison County:

August the 1st, A. D. 1850.

WILLIAM CHRISTY *versus* JAMES FINLEY.

Pursuant to an order of your Honorable Court, dated the fifth day of July, one thousand eight hundred and fifty, notice being given to

the attorneys of the parties, and the twenty days' notice being waived as shown upon the back of the order; the first day of August being set to commence the work, and then on that day I proceeded to the ground in company with James Finley, defendant, and Archibald Hughes, as agent of the plaintiff, who pointed out and directed the survey, which was examined and surveyed as follows:—

Having no knowledge of the beginning corner, I proceeded to the place which I supposed to be the west corner of the three-league survey; I then proceeded south with the line which I found marked to where I supposed the southwest corner of the same was: I then ran east but could find no marked line in search of the beginning corner, but could not find anything resembling a corner, but found a line which I supposed to be the east boundary of the three-league survey: I then proceeded to a thorough investigation, which is shown in the following field notes:—

Field Notes of the Three-league Block.

Being on an old line as above stated, I proceeded north, following the same, the issue of which is as follows:—

From this point running north with said line at nine hundred and thirty-five varas a branch running southwest; at forty-four hundred and fifty-eight, a small branch flows west; at fifty-two hundred and twenty varas I found a corner representing as follows: a hickory about fifteen inches in diameter, of which I took the bearing north seventy degrees west, at the distance of eleven varas, I set my compass from which point a post-oak about fifteen inches in diameter bears south fourteen degrees east, four and four-tenth varas off, both of which were marked with a cross, with some other hacks on the same, which seems to have been made with an axe; there was no stake or mound found at this place.

I then proceeded west with the same variation as the other line last run, which was to the regulation as near as I was capable of ascertaining to the variation of ten degrees and twenty-five minutes west, north latitude, but found no line marked: at the distance of fourteen hundred varas a small branch running northwest; nineteen hundred varas a branch five varas wide flows northeast, and nineteen hundred and eighty varas, a branch three varas wide flows northeast by east; at fifty-seven hundred varas a branch flows southeast by east, ten thousand six hundred and twenty varas, a branch three varas wide flows south; at twelve thousand nine hundred and forty varas, a branch flows south; at fifteen thousand varas I find no corner nor mark of line, but running on at fifteen thousand and seventy varas a small branch flows southeast by east, crossing the same several times, and at fifteen thousand seven hundred and ninety varas, I find an old line on which to my left hand on same at the distance of thirty varas, I find what I suppose to be a corner, which is as follows: A black-jack which had been cut down on the opening

of a road, on the trunk of which I find some hacks, though it being much decayed, I could not identify as to how they were made, the same black-jack being full fifteen inches in diameter, and giving it the bearing of north four degrees east, at the distance of five and two-tenth varas, it gave me a point directly on the line as near as I was able to ascertain; there was also another black-jack standing west of the line, which bore from this point just ascertained, south sixty-five degrees west about one and eight-tenth varas, which had marks and scars on it, which I have no doubt was made by an axe: I then ran south with said old line, which runs to a bearing or variation heretofore given, and at the distance of eighty varas a small branch running eastwardly; at twelve hundred and sixty varas a small branch running southwest fourteen hundred and twenty varas, the same branch running southeast; at thirty-five hundred and ten varas, a branch two varas wide flows southeast; at five thousand varas I find no corner or line running at right angles with this line, but on at fifty-two hundred and twenty varas I find the appearance of a small mound, in which I find a piece of a stake, say five or six inches long, which was entirely buried in the mound, from which a black-jack about twelve inches in diameter bears north twenty-eight degrees west, at the distance of three and two-fifth varas, and another black-jack, which was one prong of a double tree which is about fourteen inches in diameter, and bears south seventy-eight degrees east five and two-fifth varas distance, both marked with a cross and other chops of an axe; the first one mentioned has been belted for the purpose of clearing the land, and has since fallen down; I then ran east, but could find no marked line, and at the distance of seventeen hundred and fifty varas from this corner, a branch two varas wide flows south; at twenty two hundred and sixty varas, a branch five varas wide flows southwest; at six thousand eight hundred and fifty varas, a small branch flows northwest; at seven thousand two hundred and seventy varas, a small branch flows northwest; at fourteen thousand six hundred and twenty varas, a small branch running eastwardly crossing the same several times; at fifteen thousand varas I examined but could find neither corner or line, but running on at fifteen seven hundred and ninety, or thereabouts, we came to the place of beginning at, and a re-examination took place, still no corner to be found. See plat number one.

I then proceeded to make the third survey represented in the petition, having no knowledge of the beginning corner, but by examining the field notes in the petition, I find that the description given of the northwest corner is the same precise description given of the northeast corner of the three-league block, or survey No. one; I therefore proceeded to that point, as I supposed it to be the said corner, and from thence run east or at right angles with the old line as spoken of in the first field-note, but could find no marked line; at three hundred and sixty varas, a branch running eastwardly; at five thousand varas examined carefully, but could find neither corner or

line; running on fifty-two hundred and sixty varas, I find an old marked line, which I took to be the east boundary called for in the field notes, on which I examined each way for a half mile, but could find no corner. I then returned to the point, running south with said line; I crossed a branch running east, at about one hundred and fifty varas intersected a field of some considerable width; at three thousand three hundred varas, a branch two varas wide flowing east; at five thousand varas I examined for corner for a considerable distance to and fro on the line, but could find no corner. I then turned west, but could find no marked line resembling this work; at forty-one hundred and ninety varas, a branch two varas wide flows southeast; at five thousand varas, examined for corner, but could find nothing resembling one; running on, at fifty-two hundred and sixty varas, finding the same old line spoken of in the outset, but still unable to find the corner. I did not traverse the old line again north, as I had done so in the three-league survey, which satisfied me that I could find no corner in it. For further explanation I will reverse the field notes so as to make the courses run as given in the original, commencing five thousand varas south of where I should have found the northeast corner of this survey, on the old line as before represented, the supposed east boundary of this league, but at no corner; I then run north with this line, at nineteen hundred and seventy varas, a branch two varas wide flows east; at forty-nine hundred varas, a small branch runs east; at five thousand varas, a diligent examination was made, but no corner to be found; I then turned west at nineteen hundred varas, leaving a small branch after crossing it many times, and at five thousand varas no corner could be found; but at fifty-two hundred and sixty varas I found a corner as follows, which was on an old line, from a point on said line which I ascertained, I found a hickory about fifteen inches in diameter, bears south seventy degrees west, eleven varas off, and a post-oak about fifteen inches in diameter bears south fourteen degrees east four and one-fifth varas, both marked with a cross and other chops with an axe, no mound or stake found. thence south with the said old line, at five hundred and sixty-two varas, a branch running west; at thirty-four hundred and eighty-five varas, a branch running southwest; at five thousand varas, there was diligent search made for a corner, but none found; thence turning east, but no marked line could be found: running on, at the distance of a thousand and seventy varas, a branch two varas wide flows southeast; at five thousand varas, no corner to be found; at fifty-two hundred and sixty varas, the place of beginning on the line, the place which was first specified. The course of the line just last mentioned, is south in the field notes furnished me, which I take to be a clerical error; which, if it was not, this survey would not close by seven thousand four hundred and thirty-nine varas, and the course with that distance would be north, forty-five degrees east; but that course no doubt is an error, and should have been east.

The Second Survey represented in the Field Notes and Petition of Plaintiff.

In this case, I could no clue to any known corner, or any evidence of corner, by which I could commence any operation on the survey that would be definite. After comparing the field notes of this survey with the field notes of the survey number three, last made, I find that the southeast corner and southwest corner of survey number three, gives the same witness trees as the corners of this survey number two; therefore I came to the conclusion that it must be right south of number three. I commenced at the point where I should have supposed the southwest (——) of number three should have been, which was on an old line as heretofore represented in field notes of number three. I then ran south with said old line at two hundred and thirty varas, a branch two varas wide runs eastward; at six hundred and eighty-five varas, a branch three varas wide flows eastward; at nineteen hundred and eighty varas, a small branch runs eastward; at four thousand varas, a branch two varas wide runs eastward; at five thousand varas, examined for a corner, but could find none. This measurement carried me into Benjamin Long's field, where the timber is much decayed and fallen down. I then ran east, could find no line marked, and at four hundred and eighty varas, a branch three varas wide flows northeast; at six hundred and sixty-five varas, a branch two varas wide flows northeast; at twenty-five hundred and seventy varas, a branch three varas wide flows north; at thirty-six hundred and fifty varas, a branch two varas wide, flowing northwest; at forty-four hundred and eighty varas, a small branch flows north; at forty-seven hundred and seventy varas, a branch flows north; at five thousand varas, I examined strictly for a corner, but none to be found; but on, at fifty-two hundred sixty varas, I find an old line, which I take to be the east boundary of said survey, on which I examined each way north and south on the line, for some considerable distance, but still could find no corner; I then turned north from this point, running with said old line; at thirty-one hundred and sixty varas, a branch three varas wide, flows east; at four thousand and forty-five varas, a branch six varas wide flows northeast; at forty-one hundred and twenty-six varas, a small branch flows southeast; at five thousand varas, intersected the ground which I had formerly examined, and having made search on this line all the way without any success in finding a corner, I declined any further examination or investigation, as the next line proposed had already been examined by me.

DAVID H[illegible]L.

(For plat see original, page 108.)

And it was admitted that Andrew Hodge, Jr. and William Christy never were citizens or residents of Mexico or Coahuila and Texas,

but always alien to the same, and to Texas up to annexation. And it was admitted that the purchase-money to be paid by Arciniega, by virtue of the 24 article of the colonization law of 1825, on the land granted to him, had not been paid. The defendants proved by several witnesses, that they had resided in the neighborhood where the land in contest is claimed to be situated, for many years, and had enquired as to old conflicting claims, and never heard of plaintiff's claim until a short time before the commencement of this action, and this was all the testimony in the case.

Upon application of the plaintiff, the court thereupon charged the jury as follows, to wit:—

1*st.* The papers offered in evidence, purporting to be conveyances, 1st, from William G. Logan for himself, and as attorney in fact of Miguel Arciniega, to Andrew Hodge, Junior; and 2d, from Andrew Hodge, Junior, to William Christy, executed before notaries public in New Orleans, were executed in conformity to law, as it was at their execution in Texas, though executed before a foreign notary, and out of the limits of the State.

2*d.* It has been objected that the land to be conveyed by the conveyances offered in evidence, from Logan for himself, and as attorney in fact for Arciniega to Hodge, and by Hodge to Christy, is not sufficiently identified to pass the title to the same; said land being described as follows: "eleven leagues of land on Red River, and Sulphur Fork in Texas, being the same granted to said Arciniega, and conveyed to said Logan under a power of attorney, on the 22d day of September, 1835," as to which the jury are instructed:—

1. Such conveyance must be given as will give effect to the intention of the parties, if the words they employ will admit of it, *ut res magis reteat quam pereat.*

2. Again, if there are certain particulars sufficiently ascertained, which designate the thing intended to be granted, the addition of a circumstance false or mistaken will not frustrate the grant.

3. When the description of the estate intended to be conveyed includes several particulars, all of which are necessary to ascertain the estate conveyed, no estate will pass except such as will agree with any description.

4. The description of the land as eleven leagues of land granted to Arciniega in Texas, and conveyed to Logan under a power of attorney of a particular date, is a sufficient description, for Arciniega could not have more than one eleven league tract; the law would not permit it: there could not be more than eleven leagues in one hand by the same kind of title.

3*d.* As to boundary and locality, the jury are instructed as follows:—

1. The object of a survey is to fix the locality, and ascertain boundary of the land to be surveyed; and it is the duty of the surveyor to run and mark all the lines. If in this respect he neglects his duty, the party interested by this neglect is not to suffer: if from

what has been done by the surveyor, the locality and boundary of the land can be aecertained, this will be sufficient.

2. Though the beginning corner of the land claimed by the plaintiff may not be found, yet if one or more of the corners be found and established, from those found and established, course and distance may be run to fix the others; though in doing so the courses and distances might have to be reversed.

3. When objects called for as descriptive of corners are found, especially in the proper course, the fact that they are found at a distance greater than that called for, will not affect the survey; but the objects found will have to be run to, unless the distance be unreasonable.

4. The streams and valleys called for as being run to and passed over by the surveyor, in running lines from corner to corner, not being found at the distances called for, or running in the direction specified, will not affect the survey, especially when the objects called for at the termination of the line are found and established.

5. Though by plaintiff's grant, the land is described as lying south of Soda Lake, yet if by an examination of the evidence of the surveyor, you ascertain that this description is incorrect, and that the proper description is west of Soda Lake, this mistake may be corrected.

6. Unless plaintiff has made out by proof at least one corner of the land in contest, called for in his grant, you should find for defendant.

7. If the second, third and fourth corners of the three-league survey are found, right lines upon the course called for in *in* the grant may be run from the second and fourth corners to find the beginning corner, and the beginning corner will be at the intersection of those two lines when extended. And if in running a line from the second corner south, and old marked line is found, which the jury are satisfied was marked as a line for the survey, this line has to be followed.

8. If in the evidence the jury find proof of the existence, at the time of the commencement of plaintiff's action, in the tract of country called for in the grant, base lines, at proper distances, and on those lines one or more corners having bearing trees of the like kind of timber with those marked as bearing trees to the corners mentioned in the grant, and at the bearing and distances called for, those corners so found should *prima facie* be considered the corners called for, until the contrary be proved.

4*th*. Though the jury may ascertain from the evidence, that the grant under which plaintiff claims is, and was when made, within the limits of the twenty border leagues, yet it is not void, though so located and granted, and though the consent and approbation of the national executive to said grant was not given, for the reasons—

1. That the 4th article of the general colonization law only prohibited colonization without the consent of the national executive,

colonization within the border and coast ( ), and this grant within the border leagues was not and did not require *colonization.*

2. All the prohibition contained in the laws of the State of Coahuila and Texas, at the date of the grant to Arciniega, had been repealed, and were no longer in force.

5. Though the grant might have been in violation of a prohibition, nevertheless it would not be void unless the law of prohibition contained beside the prohibition, also an annulling clause.

6. Though the law under which the concession to Arciniega was issued, was repealed before the issuance of the grant, the right vested by the concession would not thereby be affected; and the right might be perfected by the giving the title of possession by the person authorized by the concession to give it.

7. That portion of the tenth section of the general provisions of the Constitution of the Republic of Texas which declares that all eleven-league claims located within twenty border leagues of the boundary line between Texas and the United States of America, which have been located contrary to the laws of Mexico, are hereby declared to be null and void, has no effect upon the grant to Arciniega, for the reason, as the Court has already said, said grant was not located in violation of any law of Mexico, though it was within the border leagues, and placed there without the consent of the national executive.

8. Though the jury may find from the evidence that the grant of Arciniega was located within the twenty border leagues, prior to the 17th day of March, 1836, and suit was not commenced to try the validity of the title vested by said grant within twelve months next after the passage of the Act of Congress of the Republic of Texas, entitled an Act "to quiet land titles within the twenty frontier leagues bordering on the United States of the North," passed January 9th, 1841, as required by the second section of said Act, the plaintiff will not be bound because said act was and is in conflict with the Constitution of *of* said Republic of Texas, and void.

9. At the time of the purchase by Hodge from Logan and by Christy from Hodge, the Constitution of the Republic of Texas was in full force, and by virtue of the provisions thereof, though Hodge and Christy were both aliens, they were each authorized to take estates in land within the limits of Texas by purchase, and hold the same until by some proceeding in the nature of office found in behalf of the State they might be divested; and if either of them sold to the other, and that other held without office found until annexation to the United States, and that other was a citizen of the United States, the estate became perfect and indefeasiable estate in fee by such annexation.

To the giving of which instructions by the Court, the defendant objected, and excepted at the giving of the same, and before the jury retired.

The plaintiff then asked the Court to instruct the jury that—

1. The defendant cannot be entitled to the bar provided by the 15th section of the Act of Limitations of 1841, unless he shows that he, the defendant, was the person and was sued, and that he had possession three years next after cause of action accrued, and before action commenced under title or color of title.

2. That in computing the three years of adverse, continuous and uninterrupted possession, it is not competent under said fifteenth section to unite the possession of two or more, claiming and holding in privity one under the other: but the possession must be continued to produce the bar for three years next after the cause of action occurred in him who is sued, and not in any other who is not sued.

Which the Court refused to give to the jury, and instructed, that possession under said fifteenth section might be in two or more claiming and holding in privity one under another, and if the possession of both so holding will make out the time prescribed under said section, and he sued has title or color of title, then the bar will be effectual. To which opinion of the Court, the plaintiff at the time of giving of said charge, and before the jury retired, excepted.

The defendant then asked the Court to instruct the jury, and the Court instructed said jury as follows, to wit:—

1. The plaintiff must recover on the strength of his own title, and before he can recover in this case the jury must be satisfied from the evidence, that plaintiff has a continued claim of title to the land in controversy; and further, they must be satisfied from the proof, that the land sued for has been identified as the land claimed by the defendant.

The said defendant then asked the Court, and the Court accordingly instructed the jury as follows, to wit:—

1. If the jury believe from the testimony that one of the links in the chain of transfer to the land in controversy from Miguel Arciniega is a power of attorney from said Arciniega to William G. Logan, dated on the 22d day of September, 1835, then plaintiff cannot recover in this case, unless he has produced the power of attorney in evidence.

2. If the jury believe from the testimony in the case that the concession to Arciniega was sold before the land was surveyed and before the grant issued, and that Logan was not a Mexican and used the name of Arciniega, a Mexican, to obtain the grant and to evade the law, which prohibited the sale of lands to any but Mexicans, then the grant is fraudulent in law and void.

3. That if the jury believe from the evidence in the case that William G. Logan was not a native Mexican, he was not entitled to take a grant of land for his own benefit by purchase from the State of Coahuila and Texas in 1835, unless he had previously removed such disability by becoming a Mexican citizen, and that the burthen of proof that such disability was removed is upon the plaintiff in this case.

4. That whether or not the land in controversy is so situated as to *to* be included in the conveyance to Hodge, under which plaintiff claims, is a question of fact for the jury; and the jury will take the description of the land in said conveyance, and unless from the situation of the land in controversy in this case, and the evidence, they believe the land in controversy was described in said deed, they will find for the defendant.

5. That whether any corner found by the surveyor was in fact a corner of the original survey, is a matter of fact for the jury, and must be proved by the plaintiff to the satisfaction of the jury to be the case.

6. That the survey contained in plaintiff's grant must be taken entire, and applied to the ground and objects described, from which the jury are to determine whether the land claimed is the land originally surveyed in the grant.

7. That the calls for the creeks, valleys, &c., and of the situation of the land, with reference to Soda Lake, on the original survey, as well as for corner trees, are to be regarded as descriptive of the land then surveyed.

8. That in the absence of other proof and description, the circumstance of being able to show corner trees answering the calls of the grant would be *prima facie* evidence of the identity of the land. But it is for the jury to consider the proof with respect to the calls for corner trees, and to other material objects called for, and from the whole to determine whether the land in controversy is the same originally surveyed in plaintiff's grant.

To the giving of all which, the plaintiff objected; and after the giving the same to the jury, excepted before the jury retired from the bar.

The defendant then asked the court to instruct the jury as follows:

If the jury believe Logan was a native citizen of the United States, and that the concession was in fact purchased by him before the grant was made, and the grant was for his benefit, that the burthen of proof is on the plaintiff to show that he had become a naturalized citizen of Mexico, Coahuila and Texas, and that domiciliation or residence in the country, or admission as a colonist merely, was not sufficient to enable him to be the beneficiary of said grant. To which, upon the application of the plaintiff by counsel, this explanation was added. If, from the testimony, the jury find that Logan was domiciliated at Nacogdoches at the time of the giving the power of attorney to him by Arciniega, such domiciliation is *prima facie* esteemed to be made as required by law, and then the jury might presume that he had been naturalized.

The defendant then asked the court to instruct the jury—

That, unless the jury believed from the evidence that the land in controversy is situated on Red River, or the Sulphur Fork, or unless it has been shown by the plaintiff that the said land in controversy

was granted to Miguel Arceniega, and conveyed by a power of attorney to Wm. G. Logan, on the 22d day of September, 1835, the plaintiff cannot recover—which the court gave with the modification, "or by a power of attorney of some other date," to which the plaintiff at the time, and before the jury retired, excepted both as to what was first asked, and as to what was added.

The defendant then moved the court to instruct the jury—

1. That if the jury believe from the evidence, that the concession upon which the grant read in evidence by the plaintiff was made, issued before the year 1832, and that the grantee, Miguel Arciniega, did not by himself or by any agent, locate and take possession of the land within eighteen months after the 28th day of April, A. D. 1832, then his right to locate and take possession of the land under the concession was barred, and plaintiff cannot recover.

2. That if the jury believe from the evidence or admissions of plaintiff in this case that Andrew Hodge, under whom plaintiff claims, and the plaintiff William Christy, or either of them, were citizens of the United States, and aliens to the Government of Mexico and State of Coahuila and Texas, at the date of their respective deeds for the land claimed and sued for by plaintiff in this case, then, under the law as it then stood in force, neither of them could or did acquire any right to the land mentioned in said deeds, and the plaintiff cannot recover.

3. If the jury believe from the evidence or facts admitted in this case, that the land claimed by the plaintiff is and was situated within the twenty leagues bordering on the United States of the North, at the time of the issuance of grant, under which plaintiff claims, then plaintiff cannot recover, unless it is proven or admitted that the assent or approbation of the Executive of the National Government of Mexico was given to said grant.

4. That if the jury believe from the admissions of plaintiff, or evidence in the case, that the land described in the grant to Miguel Arciniega, read in evidence by plaintiff, is and was at the date of said grant, situated within the twenty leagues bordering on the United States line, and that the plaintiff failed to bring a suit against the Republic of Texas to prove or establish the validity of said grant, within one year after the 17th day of March, A. D. 1841, as required by the act of the Congress of the Republic of Texas, approved on the ninth day of January, 1841, entitled "An act to quiet land titles within the twenty frontier leagues bordering on the United States of the North," then plaintiff cannot recover in this case. All of which the court refused to give to the jury, and the defendant at the time excepted.

As to all of which objections and exceptions taken by plaintiff, the same were taken and made at the time of the rulings of the court respectively, and before the jury retired to make a verdict; and now said plaintiff prays that this, his bill of exceptions, may be

signed, sealed, enrolled, and made a part of the record herein, which is done accordingly.

JOHN C. WATROUS. [SEAL.]

And on the twenty-fourth day of March, A. D. 1854, the plaintiff, by his attorney, tendered the following bond, which was approved by the court and ordered to be filed, to wit:—

Bond.

Know all men by these presents, that we, William Christy and Robert Hughes, are held and firmly bound unto Henry Bullard in the just and full sum of five hundred dollars, for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 24th day of March, A. D. 1854.

The condition of the above obligation is such that whereas, the above-named William Christy hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered against him in favor of said Henry D. Bullard, at the January Term, A. D. 1854, of the District Court of the United States for the District of Texas, at Galveston, in the suit wherein the said William Christy was plaintiff, and said Henry D. Bullard defendant. Now if the above-named William Christy shall prosecute his said writ of error with effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise to be and remain in full force and effect.

WILLIAM CHRISTY,
By his Atto. ROB. HUGHES. [SEAL.]
ROB. HUGHES. [SEAL.]

Signed, sealed and delivered in presence of
JOHN C. WATROUS.

THE STATE OF TEXAS,
County of Galveston:

I, James Love, Clerk of the District Court of the United States for the District of Texas, at Galveston, certify that the foregoing contains a true copy of the record, and all the proceedings had in the case of William Christy against Henry D. Bullard.

In testimony whereof, I hereto set my hand and affix the seal of said court, at the city of Galveston, this third day of July A. D. one thousand eight hundred and fifty-four.

[SEAL.] JAMES LOVE,
Clerk.

UNITED STATES OF AMERICA,
District of Texas, to wit:

District Court at Galveston.

WILLIAM CHRISTY vs. HENRY D. BULLARD. } 170. Trespass to try title.

And now, on this 24th day of March, A. D. 1854, comes the plaintiff, William Christy, by his attorney, and says, that in the record and proceedings, and in the judgment herein, there is manifest error, in this:—

1. The plaintiff, by his counsel, on the trial asked the court to instruct the jury, that "the defendant cannot be entitled to the bar provided by the 15th section of the act of limitations of 1841, unless he shows that he, the defendant, was the person in possession and *and* sued, and that he had possession for three years' rent after cause of action accrued, and before action commenced, under title or color of title: and 2, that, in computing the three years of adverse, continuous and uninterrupted possession, it is not competent, under said fifteenth section, to unite the possessions of two or more claiming and holding in privity one under the other; but that the possession is to be continued to produce the bar, for three years next after the cause of action accrued in him who is sued, and not in any other not sued," which the said court refused to give to said jury; but instructed them, that a possession under said fifteenth section might be in two or more, claiming and holding in privity one under another; and if the possession of both so holding will make out the term prescribed by said section, and he sued has title or color of title, then the bar will be effectual.

2. The said court, upon the said trial, upon the application of the defendant by counsel instructed the jury, that if they believe from the testimony that one of the links in the chain of transfers to the land in controversy, from Miguel Arciniega is, a power of attorney from said Arciniega to William G. Logan, dated on the 22d of September, 1835, then plaintiff cannot recover in this case, unless he has produced the power of attorney in evidence:" when no such instruction should have been given.

3. The said court, upon the said trial, upon the application of defendant by counsel, instructed the jury, that "if from the testimony in the case, they find that the concession to Arciniega to William G. Logan, before the land was surveyed, and before the grant issued, and that Logan was not a Mexican, and used the name of Arciniega, a Mexican, to obtain the grant, and to evade the law, which prohibited the sale of land to any but Mexicans, then the grant is fraudulent in law and void," when by law, no such instruction should have been given.

4. The said court, upon the said trial, upon the application of de-

fendant by counsel, instructed said jury that, "if they believe from the evidence, that William G. Logan was not a native Mexican, he was not entitled to take a grant of land for his own benefit, by purchase, from the State of Coahuila and Texas, in 1835, unless he had previously removed such disability, by becoming a Mexican citizen; and that the burthen of proof that such disability was removed is upon the plaintiff in this case;" when in the evidence before the jury, there was nothing authorizing such a charge.

5. The said court, upon the said trial, upon application of the defendant by his counsel, instructed the jury that, "whether or not the land in controversy is so situated as to be included in the conveyance to Hodge, under which plaintiff claims, is a question of fact for the jury; and the jury will take the description of the land in said conveyance, and unless, from the situation of the land in controversy in this case, and the evidence, they believe the land in controversy was described in said deed, they will find for the defendant."

6. The said court, upon the said trial, upon application of the defendant by his counsel, instructed the jury that unless they believed from the evidence that the land in controversy is situated on Red River, or the Sulphur Fork, or unless it has been shown to the plaintiff that the said land in controversy was granted to Miguel Arceniega, and conveyed by a power of attorney to William G. Logan on the 22d, 1835, the plaintiff cannot recover;" which the court gave with this modification: "or by a power of attorney of some other date;" which neither the said charge, nor said modification, nor both united should have been given.

All which said plaintiff is ready to verify; whereupon he prays a writ of error, &c., and that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for nothing, &c.

ROB. HUGHES,
For Plff. in Error.

Filed 24th March, 1854.

JAMES LOVE,
Clerk.

UNITED STATES OF AMERICA, ss:

To Lodovick P. Alford, Adm'r of Henry D. Bullard, deceased, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the District of Texas, wherein William Christy is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.